UNITED
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CRC

Convention on the
Rights of the Child

Distr.
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CRC/C/51/Add.2
22 May 1998

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1997

Addendum

SOUTH AFRICA

[4 December 1997]

GE.98-16294 (E)

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Abbreviations

ANC	African National Congress
CBO	Community-based organization
CSS	Central Statistical Services
DACST	Department of Arts, Culture, Science and Technology
DWAF	Department of Water Affairs and Forestry
ECD	Early Childhood Development
IDASA	Institute for a Democratic South Africa
IMC	Inter-Ministerial Committee on Young People at Risk
IMCD	Integrated Management of Childhood Diseases
IMCG	Inter-Ministerial Core Group
ISS	International Social Services
Kempton Park	A suburb outside Johannesburg where the negotiations for a peaceful transition to democracy took place.
NCPS	National Crime Prevention Strategy
NCRC	National Children's Rights Committee
NIPILAR	National Institute for Public Interest Law and Research
NPA	National Programme of Action for Children in South Africa
NPASC	National Programme of Action for Children in South Africa Steering Committee
PAC	Pan Africanist Congress
PSNP	Primary School Nutrition Programme
RDP	Reconstruction and Development Programme
SACP	South African Communist Party
SADC	Southern African Development Community
SANGALA	Southern African National Games and Leisure Activities
TRC	Truth and Reconciliation Commission

The terms "African", "Coloured", "Indian" and "White" are apartheid classifiers. Because these racial classifications correspond so strongly with economic and social status and poverty, they have been retained until such time as greater equity between race groups has been achieved. As elsewhere in the world, the term "Black" is preferred (to Coloured, Indian and African) in some political circles. It is, however, not universally accepted. Despite the efforts to build national unity, nomenclature in South Africa is subject to divisions and tensions that may take decades to eradicate.

Executive Summary

Chapter I contains an overview of measures taken by the South African Government, building on the work previously undertaken by civil society, to meet the requirements of the Convention. It spells out the constitutional rights of the child and lists legislation passed in the last two years, as well as legislation currently tabled in Parliament or in preparation. It details other measures such as other conventions ratified, policy developments, and research projects of the South African Law Commission affecting children. It also describes the reporting process, steps taken to ensure coordination and some budgetary considerations.

The structures, mechanisms and processes of the Inter-Ministerial Committee and the National Programme of Action as vehicles for implementation are briefly described. The decentralization of the NPA is highlighted as an important factor in promoting local action. Measures taken to make the Convention widely known are outlined and a list of achievements is provided. In addition, a way forward is highlighted.

After a short discussion about the current environment as it relates to the Constitution, the current legislative framework and customary law, chapter II provides a "definition" of childhood in specific situations. These include: legal age of marriage, guardianship and custody of the children of minors, legal entitlement to representation in court, the obligation to give evidence, the trial and imprisonment of children, the age of criminal capacity, the age of consent to sexual intercourse, consent to medical treatment, age of military service, age of employment, age of schooling and compulsory education, voting age, age for the consumption of alcohol and tobacco and the age at which a licence for a firearm may be acquired.

Where necessary, inconsistencies between the law, the Constitution and the Convention have been identified. The rationalization of the current status of children, defined under 27 laws and Acts, is highlighted as a challenge.

Issues discussed include the need to strike a balance between the definition of the child where it concerns the right to protection and the definition of the child where it concerns the right to empowerment and decision making. The importance of considering not only chronological age, but maturity and development is briefly considered.

The first required heading in chapter III is the "Principle of non-discrimination". The legal and constitutional context is outlined in some detail, as is the fact that there remains, both in law and in practice, widespread discrimination. The considerable achievements of Government in this regard are, however, spelt out. It is observed that the previous system, based as it was on institutionalized racism, makes this area a particularly important and difficult challenge.

The second heading is the "Best interests of the child". Here attention is given to the significant research of the SA Law Commission, as well as projects undertaken by Government to secure conformity with the Convention and, indeed, the Constitution.

The third heading is the "Right to life, survival and development". This section covers both the legal and constitutional requirements and legal changes made with respect to the right to life, and describes measures taken by Government to improve the quality of life, the right to survival and the development of children. Particular attention is drawn to the goals and projects of the RDP and the various departments charged with the delivery of services.

The fourth heading is "Respect for the views of the child". Here again, the various pieces of legislation aimed at achieving this are highlighted, and areas where the practice does not conform to the legislative requirements or where the law itself is deficient or self-contradictory are mentioned. Programmes highlighted include the Children's Broadcasting Summit, the Children's Charter, the Youth Commission and the proposed new juvenile justice system.

Chapter IV spells out the civil rights and freedoms required by the Convention and measures South Africa's performance against these standards. The categories are as follows: Name and nationality, Preservation of identity, Freedom of expression, Freedom of thought, Freedom of conscience and religion, Freedom of association and peaceful assembly, Protection of privacy, Freedom of access to appropriate information, The right not to be subjected to torture, inhuman and degrading treatment or punishment.

The corresponding rights in the Constitution are highlighted, as are the legal changes that have been made. Under the heading Context and implementation, both improvements and problem areas are highlighted. A "way forward" is identified.

The various programmes aimed at improving the health and welfare of children are described in chapter V within the context of the overall process of health restructuring. Particular prominence is given to strategies to promote equity which include the policy of providing free health care for children and pregnant women, and inter-sectoral initiatives such as the primary school nutrition programme. Programmes and services provided by the Departments of Health and of Welfare to address the plight of children are described, with special attention given to the need to address issues such as child survival and development, as well as the emerging priorities of HIV/AIDS and disability.

Chapter VI acknowledges the variety of family forms found in South Africa, and includes previously unrecognized marriages entered into under religious, customary and common law. It also recognizes the large number of single-parent relationships in South Africa. The areas covered are: Parental guidance and responsibilities, Separation of children from parents, Family reunification, Illicit transfer and non-return of children, Recovery of maintenance for children, Children deprived of family environment, Adoption, Periodic review of placements, Abuse and neglect, including physical and psychological recovery and social integration. Under each area the legal and constitutional framework is provided, together with a description of measures taken and programmes developed or in development. Discrepancies, legal inconsistencies and measures that still need to be taken are described.

Issues highlighted include an examination of welfare laws, policies and programmes which focus on promoting equity and target the marginalized and the poor; new policies in special areas; residential care and new child and youth care systems; child support to enhance family life; the revision of the Child Care Act, and the harmonization of customary laws with legislation in a sensitive manner.

Chapter VII describes education, sport, leisure and cultural activities. Under Education, the legacy of disadvantage is described in some detail to provide some context for what follows, particularly with regard to the South African Schools Act. The provisions of this Act and its departure from the previous educational environment are spelt out in some detail. Practical programmes and provincial achievements are detailed under the heading Context and implementation.

Under Sport, leisure, cultural and recreational activities, the important relationship between culture and education is highlighted and the National and Provincial Arts Councils are referred to. A number of sports programmes, particularly the achievements of the SANGALA projects, are described.

A "way forward" is once again identified.

Chapter VIII refers to the fragmentation of legislation on children, with responsibility spread across various government departments. From South Africa's point of view this is a significant chapter as it enables the report to identify categories of children and vulnerable groups. It is here that some additional information, not specifically required by the Convention framework, has been supplied.

Under Children in states of emergency, attention is given to the status of refugee and asylum-seeking children and the problems they face. The various programmes available to assist refugee children are described, as is the legislative framework which currently governs South Africa's response to the refugee question.

Under Children in armed conflict, an attempt is made to provide a background against which the majority of children lived their lives in the apartheid years. The role of children in the liberation struggle, their oppression under states of emergency, and the conscription of white male youth are briefly described. The Legal and constitutional framework attempts to place the argument within an international context and makes reference to the Machel study and the OAU Charter. It highlights the government ban on the use, production and trade in anti-personnel landmines. Measures for physical and psychological recovery and social integration, including the work of the Truth and Reconciliation Commission, are briefly described.

Under children involved with the system of administration of juvenile justice, some considerable attention is given to the constitutional requirements and attempts to conform to this in practice. The chapter describes the proposals of the SA Law Commission Issue Paper on Juvenile Justice and other relevant policy in this area. The section is divided (according to the Convention guidelines) into The administration of justice

and children deprived of their liberty. There are, inevitably, areas of overlap, particularly with regard to the proposed new juvenile justice system.

Under Children in situations of exploitation, including physical and psychological recovery and social reintegration, various areas of reporting are required. These include:

(a) Economic exploitation of children including child labour, where the constitutional and legal requirements are described, with particular reference to the Basic Conditions of Employment Amendment Act and the provisions of the new bill. The social and economic challenges to be met in imposing regulations with regard to child labour are also described;

(b) Under Drug abuse, the report lists the legislation relating to such matters and describes the work of the task team on children and drugs. Programmes and other initiatives are highlighted;

(c) Under Sexual exploitation and sexual abuse, the situation of sexually abused children is described, as is the increasing problem of the commercial sexual exploitation of children. This section includes some detail on this problem and its causes, and highlights the inadequacy of legal definitions, particularly with regard to the Sexual Offences Act of 1957. Detailed examination is given to this area as one requiring urgent attention. Policies and programmes developed by Government are described and a way forward is identified;

(d) Under Sale, trafficking and abduction, South Africa's adoption of the Hague Convention on Civil Aspects of International Child Abduction is highlighted.

The final section, Children belonging to a minority or indigenous group, points out that the most disadvantaged group of children in South Africa is the majority group. It highlights the enormous challenges of meeting the requirements identified in the RDP and provides some detail on attention given by Government to language and religious groups. It also highlights the protections extended by the Constitution to children belonging to minority groups.

I. GENERAL MEASURES OF IMPLEMENTATION

A. Measures taken to harmonize South African law, policy and practices with the provisions of the Convention (art. 4)

The Constitution

1. Following the ratification of the Convention on the Rights of the Child in June 1995, the Government sought to bring legislation, policy and practice in line with the requirements of the Convention. This is clearly reflected in section 28 of the Bill of Rights of the Constitution (1996), which deals specifically with the rights of children, in addition to the rights they enjoy elsewhere in the Bill of Rights. It reads as follows:

"28 (1) Every child has the right:

(a) to a name and a nationality from birth;

(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;

(c) to basic nutrition, shelter, basic health care services and social services;

(d) to be protected from maltreatment, neglect, abuse or degradation;

(e) to be protected from exploitative labour practices;

(f) not to be required or permitted to perform work or provide services that

(i) are inappropriate for a person of the child's age; or

(ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35 [relating to freedom and security of the person and rights of arrested, detained and accused persons], the child may be detained only for the shortest appropriate period of time, and the right to be:

(i) kept separately from detained persons over the age of 18 years; and

(ii) treated in a manner, and kept in conditions, that take account of the child's age; and

(h) to have a legal practitioner assigned to the child by the State, and at State expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

(i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section 'child' means a person under the age of 18 years.".

2. While article 28 offers far-reaching opportunities for Government and civil society to protect its most vulnerable citizens, remnants of apartheid legislation remain on the books. There is an urgent need to continue reviewing and revising legislation and policies which affect children in order to align them with the Convention and the Constitution.

Framework of the National Programme of Action for South African Children 1/

3. Ratification of the Convention on the Rights of the Child committed South Africa to implementing a "first call for children" whereby the needs of children are considered paramount throughout the Government's development strategies, policies, programmes and services. This principle was adopted by the Reconstruction and Development Programme (RDP) and is the basis of South Africa's commitments to children.

4. The National Programme of Action (NPA) is the instrument by which South Africa's commitments to children are being carried out. It is a mechanism for identifying all the plans for children developed by government departments, non-governmental organizations (NGOs) and other child-related structures, and for ensuring that these plans converge in the framework provided by the Convention, the goals of the World Summit for Children, and the country's development programme.

5. In April 1996, the Cabinet approved the NPA framework and its implementation by relevant ministries and departments. The NPA is therefore not a separate plan for children; it is an integration of all the policies and plans developed by government departments and NGOs to promote the rights of children as embodied in the Convention.

6. The NPA has been structured by policy cluster areas. For each policy cluster, goals have been set, and relevant responsible departments and their national strategies identified. Implementation of a monitoring system is in progress. 2/

7. Its development has been constrained by difficulties encountered in defining indicators with which to measure the overall well-being and rights of children, and not just their survival, development and protection.

Legislation

8. Legislation is introduced in Parliament by the ministers responsible for specific areas of work in government. In addition, the South African Law Commission, a permanent body, conducts investigations into various areas of

the law and law reform. Since the 1994 election, a culture of broad consultation has been introduced at all stages of the law-making process.

9. A large number of statutes affecting children were approved by Parliament between 1995-1997. Amongst these:

(a) The National Youth Commission Act (1996) creates a commission to coordinate and develop an integrated national youth policy and development plan;

(b) The Legal Aid Amendment Act (1996) ensures that every detainee and accused person has the right to consult with a legal practitioner of his or her choice and, where substantial injustice would otherwise result, to be provided with the services of a legal practitioner by the State or with legal representation at State expense;

(c) The Hague Convention on the Civil Aspects of International Child Abduction Act (1997) facilitates the implementation of the Hague Convention, restricting the wrongful removal of children across international boundaries and establishing a procedure to restore children to their rightful custody as soon as possible;

(d) The Criminal Procedure Amendment Act (1996) aims to address problems caused by delays in the administration of justice;

(e) The Films and Publications Act (1996) introduces measures, inter alia to protect children from exploitation through child pornography and exposure to inappropriate material;

(f) The National Education Policy Act (1996) makes provision for minimum norms and standards in education;

(g) The South African Schools Act (1996) provides for the transformation of South African schools; 3/

(h) The National Qualifications Authority Act (1996) sets in place structures which make possible the articulation of education qualifications in all the education sectors;

(i) The Divorce Amendment Act (1996) allows all people in South Africa to use divorce procedures that previously applied only to civil marriages;

(j) The Child Care Amendment Act (1996) brings the 1983 Child Care Act in line with the new Constitution and the Convention, by enhancing measures to protect children and promote their rights. These include measures to recognize indigenous and religious marriages, adoption, street children shelters and legal representation of children;

(k) Amendments to section 29 of the Correctional Services Act (1995 and 1996) were introduced as a temporary measure to provide for children awaiting trial to be detained in prisons or police cells where no secure care facilities are available;

(l) The Abolition of Corporal Punishment Bill (1997), in line with the Constitutional Court judgement that juvenile whippings are unconstitutional, repeals or amends all statutory provisions allowing courts to impose corporal punishment.

Legislation pending

10. The following bills have already been introduced into Parliament or are expected to be introduced and promoted during the 1997 parliamentary session:

(a) The Powers of Natural Fathers of Extramarital Children Bill (1997) provides that a natural father has the right to be notified of the impending adoption of his extramarital child;

(b) The Divorce Courts Amendment Bill (1997) deracializes the "Black" divorce courts as a shot-term measure until family courts can be established and extends the power of the Office of the Family Advocate to these courts;

(c) The Assessors Bill (1997) aims to expand the lay assessor system in the lower courts to enhance community involvement in the criminal courts;

(d) The Witness Protection Programme Bill (1997) provides for the establishment of an office responsible for the protection of witnesses (including children) who have given or will be required to give evidence in criminal proceedings or before a commission;

(e) The Establishment of Family Courts Bill (1997) provides for the establishment of family courts for the adjudication of all family-related matters;

(f) The Maintenance Amendment Bill (1997) addresses problems relating to maintenance for women and children;

(g) Amendments to the Criminal Procedure Act will provide for tighter bail requirements and minimum sentences. Under discussion at present is the issue of whether older children should or should not be exempted from these provisions;

(h) The Bill on Higher Education (1997) is aimed at the restructuring of higher education.

International conventions

11. In addition, two international conventions are due to become part of the domestic law through the Convention on the Elimination of All Forms of Racial Discrimination Bill (1997) and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment Bill (1997).

Policy

12. Several departments, notably the Departments of Health, Welfare, Housing and Education, have embarked on the transformation of policy in order to bring it in line with international human rights instruments such as the Convention.

South African Law Commission

13. The South African Law Commission has recently appointed project committees to look into legislation on the prevention of family violence and children in difficult circumstances and HIV/AIDS policy in schools. These include the Project Committee on Juvenile Justice, which will draft legislation for the creation of a new juvenile justice system, and the Project Committee on Sexual Offences by and against Children, which will draft legislation on the protection of sexually abused children.

14. The South African Law Commission has also recently appointed a project committee whose task it will be to revise the Child Care Act (1983). The committee may extend the scope of this review to include other legislation affecting children and the harmonization of customary law as it affects children.

Steps taken to ensure periodic evaluation of progress in the implementation of the Convention at national and provincial levels, including preparation of periodic reports to Government

15. The terms of reference for the National Programme of Action Steering Committee (NPASC) make provision for the production of progress reports to Cabinet to be presented annually and whenever required. These reports reflect progress at national and provincial levels and provide an opportunity to identify shortcomings and to develop plans to overcome them.

16. The first report on the progress of the NPA was presented in March 1997. Its contents have been incorporated into this report.

Steps taken to ensure coordination between economic and social policies

17. The RDP is the foundation for the reconstruction and development of South Africa, as well as the basis for coordinating the economic and social policies of government. Children have been given priority throughout the RDP (the "first call for children"), and several of the lead programmes of the RDP focus on children's needs. These include:

(a) The Primary School Nutrition Programme;

(b) The provision of free health care at all levels of the public health system for children under six years of age and pregnant and lactating women;

(c) Universal access to primary education and to water.

18. Social policies and programmes developed within the overall framework of reconstruction and development have been implemented alongside a macroeconomic strategy 4/ aimed at achieving and sustaining higher rates of growth, employment and development.

19. Concern has been expressed that macroeconomic strategies could have adverse effects on social development and the reduction of disparities. Consideration is being given to developing safety nets to guard against such effects and to ensuring that the goal of promoting equity is met.

Proportion of the budget devoted to social expenditures for children

20. There is no mechanism in government for assessing government spending on children. Determination of resource allocation to programmes that benefit children has been constrained by the failure of most government departments to identify children as a distinct homogeneous group, and neither baseline information nor budgetary trend analyses are available. However, the Children's Budget project, convened by the Institute for a Democratic South Africa (IDASA), has attempted to address this problem by examining government resource allocation to children and assessing whether programmes adequately reflect the needs of children. This is the first account of government spending on children in South Africa and will provide a baseline for further analysis and for monitoring trends over time.

Extent to which international cooperation is designed to foster the implementation of the Convention (with proportion of international aid allocated to programmes for children)

21. At the national level, the first call for South Africa's children has been supported by a number of international and bilateral donors. A substantial proportion of international aid is provided in the form of technical assistance to build capacity at national and provincial levels. NGOs also receive assistance from the international community, and national legislation is being formulated to guide funding arrangements.

22. The NPA framework has been a useful instrument for facilitating the work of international agencies in initiating programmes and providing support for children.

B. Existing or planned mechanisms at national, provincial and local/community level for coordinating policies relating to children and for monitoring the implementation of the Convention (art. 42)

23. There is general consensus that the best vehicle for coordination is through a partnership between government and civil society. Before 1994, civil society played a significant role in this regard but, since the first democratic elections, the prime responsibility for coordination has shifted from civil society to government. Government has accordingly initiated a number of mechanisms to give effect to its commitments to children through the establishment of a variety of structures. These include the Inter-Ministerial Core Group (IMCG) within Cabinet, and the National Programme of Action Steering Committee (NPASC) within government which has identified several task groups to work in particular areas.

Inter-Ministerial Core Group (IMCG)

24. The IMCG was nominated by Cabinet in 1995 and comprises the Office of the Deputy President and the Ministers of Health, Welfare, Education, Water Affairs and Forestry, Finance, and Justice. The Minister of Health is Chairperson of the IMCG. This group is charged with overseeing the process of developing the NPA.

National Programme of Action Steering Committee

25. The NPASC comprises the Directors-General of the departments corresponding to the seven ministries on the IMCG, as well as representatives from the National Children's Rights Committee (NCRC) representing non-governmental organizations and UNICEF South Africa. The NPASC is the executive instrument for overseeing the identification of plans, implementation and co-ordination of all players to ensure compliance with the obligations of the Convention.

26. Since its inception in 1995, the NPASC has co-opted representatives from the following departments and structures to assist it in fulfilling its task: the Departments of Correctional Services, Safety and Security, Foreign Affairs, Labour, Provincial Affairs and Constitutional Development, the nine provinces, the Inter-Ministerial Committee on Young People at Risk, the Human Rights Commission, the Youth Commission and the Truth and Reconciliation Commission.

27. The NPA Monitoring Task Group is responsible for developing ways to monitor progress on the implementation of the Convention and the NPA recommendations. It must also coordinate the production of reports to Cabinet and to the United Nations Committee on the Rights of the Child. A Drafting Team has been mandated to undertake the latter task.

28. Internally, the process involves annual progress reports to Cabinet. These reports are intended to review the extent to which government is succeeding in giving effect to its commitments to children, and hence the reports focus mainly on governmental activity. The external monitoring requirement demands a more extensive review, which includes the components embodied in the first internal report, but must also be expanded to include all areas required by the Convention.

29. The Communications Task Group is a second working group of the NPASC. The Task Group is charged with developing a plan for ensuring wide dissemination of information about the NPA. This group needs strengthening.

30. On each of these structures, there is representation from government and from civil society. This partnership is also reflected in the process through which the country report has been compiled.

Other initiatives

31. In addition to these, the Council of Education Ministries and the heads of Education Departments (representing the provinces) advise the national Minister of Education on the coordination of the education of the almost 12 million children in the country.

32. The South African Human Rights Commission and the Department of Justice have both introduced a special focus on children's rights.

C. Measures taken to make the principles and provisions of the Convention widely known (art. 44, para. 6)

Government measures

33. The Communications Task Group of the NPASC is charged with developing a plan for ensuring wide dissemination of information about the NPA and the Convention.

Civil society measures

34. The NCRC is the main alliance representing NGOs and community-based organizations (CBOs) dealing with children. This alliance has led the advocacy of child rights since its inception in 1990 and continues to play a vital role in publicizing the provisions of the Convention. The NCRC has translated the Convention into the country's 11 official languages.

Measures to involve children

35. Children's participation in the implementation of the Convention has by and large been mediated by NGOs. The major achievements have been the convening of a national children's summit which resulted in the formulation of the South African Children's Charter in 1995.

Other measures

36. More recently, the United Nations invited children with disabilities to participate in an international debate about their rights to participate. Their recommendations will be considered as part of South Africa's overall disability programme.

37. Education in children's rights is being introduced into the school curriculum, and some tertiary institutions are participating in the informal international university network on child rights convened under the auspices of UNESCO. Both these efforts are aimed at ensuring that education institutions address child rights in practice, as well as through their curricula.

38. Other measures include: the Children's Broadcasting Summit, the declaration of 16 June 5/ as National Youth Day and a public holiday, the setting up of the Nelson Mandela Children's Fund, the prioritization of the interests of children in the RDP and the acceptance by South Africa of the African Charter on the Rights and Welfare of the Child.

D. Achievements

39. South Africa has achieved much in terms of its commitments to the tenets of the Convention on the Rights of the Child. These achievements include:

(a) Inclusion in the new Constitution of section 28 which enshrines the rights of the child;

(b) Introduction of laws, policies and programmes to bring South African legislation in line with the Convention;

(c) Ratification of international conventions affecting, inter alia, the rights of the child;

(d) Mainstreaming the principles of the Convention in the country's reconstruction and development framework;

(e) Development of a National Programme of Action by civil society prior to the election of the present government in 1994;

(f) Transfer of responsibility for the National Plan of Action to a partnership between government and civil society;

(g) Conformity between the National Plan of Action and the Convention on the Rights of the Child;

(h) Active participation in the implementation of child rights by a strong national alliance of NGOs;

(i) Development by civil society of several instruments to guide policy and practice for children, including the South African Children's Charter and the Children's Broadcasting Summit;

(j) Signing of the African Charter on the Rights and Welfare of the Child;

(k) Establishment of national and provincial structures to coordinate implementation of the Convention through the NPASC and its sectoral and other working groups;

(l) Active programmes and media initiatives, training and the development of appropriate materials translated into all official languages and in child-appropriate formats - mainly by non-governmental organizations.

E. The way forward

40. There is a need to improve intersectoral and interdepartmental collaboration.

41. Partnership between government and civil society needs to be consolidated, with space created for civil society in the various structures of government. Several concerns have been expressed about the nature and structure of this partnership. These have been discussed extensively over the

past two years, both within the NPASC and with various other groupings inside and outside of government. Steps are being taken to address all of these concerns in a systematic way. Concerns include:

(a) Missing of opportunities provided by the NPA for addressing all aspects of the Convention and giving equal attention to civil rights and freedoms;

(b) Missing of opportunities to harness a wide range of experiences and expertise through the identification of players, their roles and responsibilities, in order to give full effect to the implementation of the plan; and

(c) Need to decentralize to community level and to diversify the process to include more players outside of government.

42. In addition, there is a need to improve instruments, indicators and the process of monitoring at all levels of governance.

43. Future activities must focus on:

(a) Budgetary arrangements in favour of children;

(b) Development of indicators which measure all aspects of child well-being;

(c) Roles and contributions of NGOs, with a special emphasis on the impact of proposed legislation to guide and monitor donor funding to NGOs, and the structuring of linkages between NGOs and government;

(d) Strengthening of effective government structures for children;

(e) Implementation of the Convention at local level;

(f) Accelerating children's participation in the process, especially younger children.

II. DEFINITION OF THE CHILD

A. General commentary

44. The process of redrafting laws to meet the requirements of the Convention has already begun. It is possible that the review of the Child Care Act (1983) by the South African Law Commission will include a broad review of legislation on children and their legal status, including the Age of Majority Act (1972), and the Children's Status Act (1987).

45. In addition, reforms are under way of laws relating to juvenile justice; legal protection for children who have been subjected to sexual abuse; child evidence; the reporting of child abuse, and a review of criminal offences in the Sexual Offences Act (1957).

46. Another challenge is the incorporation of customary and religious law systems and their harmonization with both common law systems and with the Convention. Customary law, the private law legal system affecting the majority of South Africa's children, is in a state of transition. This is a result of the adaptation of customary law practices to urban settings, a cash economy and evolving notions of gender equality. Customary law does not incorporate legal rules that apply according to chronological age, but rather differentiates status according to gender (the perpetual tutelage of the married woman), and the passage of rites (for example, rights acquired after initiation).

47. The South African Law Commission is currently scrutinizing customary law rules that regulate the position of children in order to ensure that the equality clause of the Constitution is not unduly infringed.

48. A further challenge will be to give practical effect to the principle of children's participation in judicial and administrative proceedings. The necessary legislation in relation to children's court inquiries is now on the statute book, but there is nevertheless a common law rule that children have no independent locus standi in court without parental assistance until they are 21 years old.

49. Although the Constitution allows for legal representation of the child (at State expense if necessary) where substantial injustice would otherwise result, it is not clear how the common law will be affected by this. It is not obvious, for example, that in custody disputes the child would be entitled to a voice; nor that the child's view, if heard, would carry great weight. The Family Advocate is an institution set up to protect the interests of children in divorce and custody matters and is one vehicle through which account is taken of the child's views, where the child is of the age and maturity to express them. The institution of the Family Advocate is likely to be extended when South Africa launches family courts.

50. At present, there are large numbers of children in South Africa who do not enjoy the protection that the notion of childhood implies. These range from children who work, to children who live independent lives on the streets, to girl children who themselves are the care givers to younger siblings and bear responsibility for the continuation of daily household life. There are children who do not attend school.

B. Definitions of childhood

51. By providing for the right of every child to a name from birth, the Constitution recognizes birth as the start of legal status. Both the Constitution and the Child Care Act (1983) define a child as a person under the age of 18 years. However, national laws defining children do not uniformly comply with the Convention, nor is there separate legislation for children in certain areas.

52. In common law, "childhood" is seen differently and divided into three age categories. Under 7 years, a child is known as an infans. At the

attainment of puberty (12 for girls and 14 for boys), another milestone is reached. From 21 years, the minor achieves majority. A child and young person's status in common law depends on these age categories.

C. Legal capacity

53. All children have legal capacity from birth. This means that children of any age may own property, although limitations are placed upon their ability to act independently in regard to that property. Under the age of 7 years, the child has no legal capacity to act: his or her guardian must act on his or her behalf. In common law, a minor is regarded as being between the ages of 7 and 21 years.

54. The Age of Majority Act (1972) says that a child will attain the age of majority for the purposes of private law at 21 years: for example, signing contracts or appearing in litigation unassisted by a parent or guardian. The Act provides for a court declaration of majority from 18 years of age. Unless majority has been obtained by this means or another exception (such as marriage), the minor under the age of 21 years is still subject to parental control over decision-making. Although there are exceptions, the general rule is that a minor cannot sign a contract that involves obligations without parental assistance.

55. The Wills Act (1953) permits a person of 16 years or older to make a will and to dispose of property in that will. A person of 14 can be a witness to a will.

56. A person of 16 years or older is allowed to open a savings account in his or her own name. At 18 a minor is allowed to take out life insurance and to pay the necessary premiums without parental consent.

D. Legal age of marriage

57. Minors under the age of 21 require parental permission to marry. Where parents refuse consent, an application may be made to the High Court (as guardian of all minors). Further, if a boy below the age of 18 years, or a girl below the age of 15 years wishes to marry, not only parental consent, but also the permission of the Minister of Home Affairs must be obtained, unless the High Court has already given its consent. No girl below the age of 12 or boy below the age of 14 may marry.

E. Guardianship and custody of children of minors

58. The Children's Status Act (1987) provides for the guardianship and custody of extramarital children where the mother herself is a minor and unmarried. In such cases, guardianship is vested in the mother's own guardian, while she herself becomes custodian of the child.

F. Legal entitlement to representation in court

59. The Constitution provides that a child under the age of 18 has the right to a legal representative in civil proceedings affecting the child, to be assigned by the State and at the State's own expense, if substantial injustice

would otherwise result. Although not in operation at the time of reporting, the Child Care Amendment Act (1996) spells out procedures for independent legal representation for children who are the subject of children's court inquiries.

60. This provision will affect other legislation in view of the fact that a person below the age of 21 years cannot sue or be sued without parental assistance. This will need to be addressed.

G. Obligation to give evidence

61. There is no fixed lower age limit precluding a child from being a witness in a civil or criminal court case. The test is derived from common law: does the child understand what it means to tell the truth? If the investigation reveals that the child has that understanding and maturity, he or she will be competent to testify, even at a young age. However, rules of evidence require a child's evidence to be subjected to a cautionary rule, and some form of corroboration is required.

H. The trial and imprisonment of children

62. The Correctional Services Act (1959) defines a "juvenile" as being under the age of 21 years. A draft amendment to the Act, however, contains a separate category for children, defined as persons under the age of 18 years.

63. There is as yet no separate juvenile justice system in South Africa, and children are tried by ordinary criminal courts, although proceedings where children are accused must be held behind closed doors. There are other isolated provisions requiring different procedures where children are accused, such as assistance at a trial by parents or guardians.

64. The Constitution provides that children under the age of 18 may be detained only as a measure of last resort and for the shortest appropriate period of time. Whilst in detention, they must also be held separately from those over the age of 18. However, this legal rule is not consistently applied in South Africa, and children are found detained in prisons with persons over the age of 18 years.

65. There is thus a need to ensure compliance with the rule that children under 18 should be detained separately from those over the age of 18, in the light of numerous breaches of this rule.

66. In December 1996, the Minister of Justice appointed a project committee of the South African Law Commission to investigate the establishment of a new juvenile justice system for South Africa. Its initial report proposes that the new juvenile justice system should apply to children below the age of 18 years.

67. Through the Inter-Ministerial Committee on Young People at Risk, six projects were established during 1996 to test the new policy framework for the Child and Youth Care System. The projects involve communities and multiple sectors and focus on various aspects of the system, including residential

care, foster care, early interventions and legal proceedings. Approximately 3,000 young people and their families have benefited from the successful implementation of the projects.

I. Age of criminal capacity

68. Under common law, children are regarded as having criminal capacity at the age of 7 years, although between the ages of 7 and 14 there is a presumption that the child lacks criminal capacity. This presumption can be rebutted by the State if it is shown that the child knows the difference between right and wrong and has the ability to act in accordance with that knowledge.

69. Parliament is currently debating a bill which will address aspects of sentencing in South Africa, amongst other issues. The bill aims to empower certain courts to impose prescribed minimum sentences, depending on the offence category, unless there are reasons for deviation from this prescribed sentence. The bill does not currently exempt children, and the view has been expressed that it may not, therefore, comply with Convention and Constitutional requirements that imprisonment be used only as a measure of last resort and for the shortest appropriate period of time.

70. In practice, the presumption that a 7- to 14-year-old lacks criminal capacity is fairly easily rebutted, and children under the age of 14 are often arrested and convicted of criminal offences. Children under the age of 14 are to be found serving sentences of imprisonment in South African prisons. In law, children of 14 and above have the same criminal capacity as that of an adult and can be sentenced to imprisonment.

J. Age of consent to sexual intercourse

71. It is a criminal offence to have sexual intercourse with a girl below the age of 16 with her consent, although the court may consider certain mitigating factors [Sexual Offences Act (1957)]. An offence in this category is known as "statutory rape". The Roman law principle that a girl under 12 is irrebuttably presumed incapable of consenting to sexual intercourse applies in South Africa.

72. Different age criteria apply, however, where boy children are concerned. A boy is presumed to be incapable of consent to sexual intercourse below the age of 14. The statutory provision regarding criminalization of sexual activity with a boy (even with consent) is 19 years.

73. The age differential between boys and girls, which in effect criminalizes consensual homosexual activity for boys below the age of 18, will be the subject of a challenge in the Constitutional Court by gay rights organizations.

74. The South African Law Commission has appointed a project team to review the Sexual Offences Act (1957), with the purpose of introducing new legislation in this field.

K. Consent to medical treatment

75. The age at which children can consent to medical treatment is determined by the Child Care Act (1983). This Act distinguishes two ages: 14 and 18. At 14 years, a child is competent to decide about medical treatment, but the parent or guardian retains the right to give consent. At 18, a person gains the right to consent to surgery, independent of his or her parent/guardian.

76. The Choice on Termination of Pregnancy Act (1996) provides that a minor, defined as a female person below the age of 18 years, must be advised to consult with her parents, guardians, family members or friends before the pregnancy is terminated. However, the termination can proceed even if the minor chooses not to consult with them, or if she does consult and they refuse to agree to a termination. In effect, since a termination involves a surgical procedure, the relevant provisions of the Choice on Termination of Pregnancy Act (1996) supersede the relevant provisions of the Child Care Act (1983) as far as parental consent and termination of pregnancy are concerned.

77. Although a minor of 14 years has the ability in law to make decisions about his or her medical treatment, the High Court, as the upper guardian of minors, is empowered to overrule the minor's decision when it is in the minor's best interest, especially when a minor refuses life-saving treatment.

L. Age for military service

78. The Constitution provides that no child below the age of 18 years may be used directly in armed conflict. Although this right may be limited during a state of emergency, no limitation can be applied to a child under 15 years old.

79. As domestic legislation now stands, the minimum age for recruitment into the armed forces is 17 (see also chapter VIII).

M. Paid work

80. The Constitution requires protection for children under the age of 18 from performing work or providing services inappropriate for a person of that child's age, as well as from exploitative labour practices.

81. The minimum age of employment for children is specified in the Basic Conditions of Employment Act (1996) and the Child Care Act (1983). The Basic Conditions of Employment Act is being revised, and a new bill is presently being debated in Parliament. This strengthens provisions on the prohibition of child labour, as well as protecting children in employment between 15 and 18 years.

82. While there have been pressures from organized labour to increase the age in the bill to 16 years of age, Cabinet recently took a decision that it should remain at 15 years as this is the same as the school-leaving age.

83. A practical point of concern is the number of children who work who are below the minimum age specified in the present legislation. Additionally, there are reports of children being subjected to exploitative and hazardous

work. At present, the child labour provision appears in the Child Care Act (1983) which is administered by the Department of Welfare. But, in 1996 responsibility for child labour issues was handed to the Department of Labour, because the Department of Welfare was unable to monitor child labour issues adequately and no resources for an inspectorate were available. There have allegedly been no prosecutions whatsoever instituted for violations of the child labour provision in the Child Care Act (1983). The new provisions will be enacted in the above-mentioned Basic Conditions of Employment Act, which will be enforced by the Department of Labour. In practice, though, it may not be easy to enforce the rules of employment.

84. In addition, much needs to be done to give effect to the provision regarding compulsory schooling until 15 years of age.

N. Schooling and education

85. The Constitution grants every person the right to a basic education. The South African Schools Act (1996) provides for compulsory education between the ages of 7 and 15.

86. For details on significant changes in South African education, see chapter VII.

87. Children with disabilities experience great difficulty with regard to access to schools. A policy (White) paper that provides, amongst other things, for children with disabilities to be accommodated in mainstream schools was, at the time of reporting, in its final stages of preparation.

O. The right to vote

88. A person acquires the right to vote in elections at the age of 18.

P. The right to consumption of alcohol and tobacco

89. A person acquires the right to purchase alcohol and tobacco at the age of 18.

Q. The right to apply for a firearm

90. A young person has the right to apply for a licence for a firearm at the age of 16. 6/

III. GENERAL PRINCIPLES RELATING TO THE RIGHTS OF THE CHILD

A. Non-discrimination (art. 2)

91. Section 9 of the Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law. It states that equality includes the full and equal enjoyment of all rights and freedoms, and that, in promoting the achievement of equality, legislative and other measures may be introduced to protect or advance persons or categories of persons disadvantaged by unfair discrimination. It also prohibits the State or any person from discriminating unfairly, either directly or

indirectly, against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. Finally, it places an injunction on the Government to enact legislation as soon as possible to prevent or prohibit unfair discrimination.

92. These requirements are consistent with the provisions of article 2 of the Convention.

1. The legal context

93. The following bills, aimed at meeting the requirements of section 9 of the Constitution, have been introduced or are expected to be introduced in Parliament during the 1997-1998 parliamentary session:

(a) Powers of Natural Fathers of Extramarital Children Bill (1997) provides that the father has the right to be notified of the impending adoption of his extramarital child;

(b) The Convention on the Elimination of All Forms of Racial Discrimination Bill (1997) will make the International Convention on the Elimination of All Forms of Racial Discrimination part of our domestic law;

(c) Amendments to the Children's Status Act (1987) provide for the following anti-discriminatory measures affecting children:

(i) The presumption of paternity where it can be proved that the alleged father of the child had sexual intercourse with the mother of the child at any time when that child could have been conceived;

(ii) The presumption of paternity where the alleged father refuses to submit himself to the relevant blood tests;

(iii) The appointment of the mother's guardian as guardian of an extramarital child where the mother is a minor, unless the court decides otherwise;

(iv) The deeming of any child born of parents who marry each other after his or her birth as the legitimate child of those parents for all purposes;

(v) Where the gamete of any person outside of a marriage has been used with the consent of both the woman and her husband for the artificial insemination of that woman, any child born as a result of the artificial insemination shall for all purposes be deemed to be the child of that woman and her husband;

(vi) The status of any child conceived or born of a voidable marriage shall not be affected by the annulment of that marriage, and no voidable marriage may be annulled until the court has inquired into and considered the interests of any minor or dependent child.

International conventions

94. The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment have been ratified by South Africa and are due to be incorporated in domestic legislation.

2. Context and implementation

Discrimination in practice

95. There remains, both in law and in practice, widespread discrimination against children, particularly the girl child. This includes, for example, a difference in the minimum age for sexual consent and marriage between boys and girls, as well as gender discrimination in respect of laws on sexual violence against children. In this respect the so-called "cautionary rule", 7/ secondary victimization of rape victims, and definitions of rape and sodomy that fail to protect children are currently under investigation. 8/

96. To identify instances of discrimination in law and practice, Government launched the NPA in 1995 in collaboration with NGOs (see chap. I). A parallel programme of legislative reform, including the above-mentioned investigations by the South African Law Commission, and a variety of practical programmes have been introduced.

97. Instances of discrimination which may occur under customary law will form a part of the South African Law Commission's investigation into the harmonization of customary law. In addition, the present Marriage Act and Islamic Personal Law are being investigated for purposes of recognition and harmonization.

Maintenance

98. Children have the legal right to maintenance from their parents, but many parents fail to meet this obligation. As a result, custodial parents approach the courts to claim maintenance on behalf of children from parents who neglect to support them (Maintenance Act (1963)).

99. An employer can also be authorized to make payments on behalf of a parent who has been convicted for failure to pay maintenance. Maintenance orders can be enforced between countries [Reciprocal Enforcement of Maintenance Orders Act (1963)].

100. However, payment and collection procedures remain grossly inadequate, and the maintenance system is currently under review with a view to revising both law and administration.

Child support benefit

101. Children whose parents or guardians are unable to support them are entitled to a child support benefit. Until very recently (1997), maintenance benefits were not available to African children. In order to introduce equity in this regard, maintenance benefits have now been made available to all children in need. The redistribution of available finances has necessitated certain adjustments. Thus, under the new arrangements the amount paid is lower and the age range narrower (see chap. V).

Refugee and homeless children

102. The 1951 Convention relating to the Status of Refugees makes no special provision for children. When determining the status of an unaccompanied minor, his or her mental development and maturity will be taken into account. The authorities must ensure that the best interests of the child are met.

103. A significant number of children live on the streets, including unaccompanied refugees and asylum seekers.

104. Children who live or work on the streets are entitled to protection through a children's court inquiry.

General concerns in respect of discrimination

105. Discrimination on the basis of status, activities, expressed opinions, and beliefs of the child's parents or family members is prohibited by sections 9 and 28 of the Constitution. However, historic economic and social disadvantage, lack of basic amenities such as shelter and food, the particular poverty of households in rural and urban informal areas, widespread unemployment, inadequate welfare subsidies, limited social security benefits and other factors mentioned above place a considerable burden on the State.

106. General corrective measures envisaged include: anti-discrimination legislation; reprioritization of the national budget to accommodate the expansion of existing shelters; the building and improvement of places of safety; child support benefits and legal aid for children; sensitization, training and capacity-building of role players; popularization of the Convention, the Constitution and other human rights instruments which bear on the rights of the child.

B. Best interests of the child (art. 3)

107. Section 28 (2) of the Constitution states that the child's best interests are of paramount importance in every matter concerning the child. Furthermore, in ratifying the Convention, South Africa committed itself to the principle of a "first call for children" - making the interests of the child paramount in all spheres.

Context and implementation

Children in conflict with the law

108. The South African Law Commission Project Committee on Juvenile Justice has published an issue paper for public consultation and discussion. Issues raised include, inter alia, pre-trial detention and release policy, diversion, juvenile courts, sentencing and monitoring. The issue paper suggests that the principal needs and interests of child offenders must be taken into account, that imprisonment of a child must be a measure of last resort and that all custodial sentences should be reviewable.

109. Amendments to the Correctional Services Act (1995 and 1996) provide that unconvicted children must not, unless it is unavoidable, be detained in a prison, police cell or a lock-up, and that imprisonment of child offenders must be a measure of last resort. The Inter-Ministerial Committee on Young People at Risk is ensuring that appropriate secure care is available for young people awaiting trial and is facilitating the transformation of the child and youth care system, a component of which is the youth justice system.

Child abuse and neglect

110. A report was prepared in 1996 by the National Child Abuse and Neglect Committee in 1996 for consideration in the drafting of legislation on juvenile justice and the new Child Care Act. In addition, a national registry of sexual or child abuse offenders is planned.

111. The South African Law Commission is reviewing the law regarding the consent of young girls to sexual intercourse.

112. Child abuse and neglect are on the increase and are cause for much public concern. Government, the media and civil society have highlighted the problems, and the Department of Justice is engaged in awareness-raising and training of personnel who deal with abused children. Appropriate care and development programmes are being established as part of the transformation of the child and youth care system.

113. The National Crime Prevention Strategy (NCPS) has set up a programme designed to ensure that the criminal justice system is victim-centred, and has identified crimes against women and children as priority areas.

Children and the justice system

114. A number of projects have been established or are planned, inter alia, to improve court operations through the provision of pre-trial services (aimed particularly at assisting women and children), to introduce a witness protection programme and to introduce children's representatives in courts. A volunteer programme to create a court-approved child advocate is also under investigation.

115. Family courts are being established to deal with family-related matters and will include counselling services and support to child victims of abuse. It has been recommended that maintenance issues fall under the jurisdiction of this court.

116. Training programmes have been established for commissioners of child welfare.

Refugee children

117. With regard to refugee children and children of illegal immigrants, amendments are proposed to prevent the dilution of refugee children's rights. The detention of refugee children in police cells and prisons is under investigation. Training by the Office of the United Nations High Commissioner for Refugees (UNHCR) on the handling of refugee children by judicial officers is also proposed.

Family life and adoption

118. With regard to family life and adoption (see further chap. VI):

(a) Every child has the right to know and be cared for by his or her parents;

(b) Adoption can take place by a husband and wife jointly, a widow or widower or unmarried or divorced person, or a married person whose spouse is the parent of a child. Certain qualifying criteria are laid down;

(c) The adoption must serve the best interests of the child. Religion and cultural background must be taken into consideration. A child over 10 years old must consent to the adoption;

(d) An adoptive parent can apply for the setting aside of an adoption order in certain circumstances. In certain cases, consent may be dispensed with.

Children and drugs

119. The South African Law Commission will investigate the protection of children as users and traffickers of drugs and will propose draft legislation. In addition, an interdepartmental task team is preparing a comprehensive prevention and education strategy on children and drugs.

C. The right to life, survival and development (art. 6)

The right to life

120. Section 11 of the Constitution provides that everyone has the right to life. According to the common law, a child acquires legal existence at birth.

121. The death penalty has been declared to be unconstitutional by the Constitutional Court. Even before this judgement and the ensuing legislation, however, no person under the age of 18 years could be sentenced to death.

122. If a child commits suicide, in addition to the normal inquest proceedings, social workers must intervene to ascertain socio-economic factors and provide necessary counselling.

123. If a child disappears, interested parties may approach the court for an order of presumption of death. Such a presumption is not made lightly.

124. Any person who disposes of the body of a child with intent to conceal the fact of his or her birth is guilty of an offence.

Right to survival and development

125. In addition to the right of the child "to basic nutrition, shelter, basic health care services and social services" in section 28 of the Constitution, every child enjoys the right to housing, food, water and social security, enshrined elsewhere in the Bill of Rights.

126. The RDP has identified a "first call for children". This means that children must receive priority in the allocation of national budgets in all areas.

127. A number of Presidential Lead Projects of the RDP seek to provide basic services to children in the most disadvantaged areas, particularly informal settlements and rural areas. These include housing, water and sanitation, electrification, health-care services, primary school nutrition, clinic building programmes and HIV/AIDS awareness and prevention. Free health care at the primary, secondary and tertiary levels is now available in public health facilities, to all pregnant and lactating women, as well as to children under the age of six years. In addition, free primary care is available to all South African residents at public health facilities.

D. Respect for the views of the child (art. 12)

128. The National Youth Commission Act (1996) provides for the creation of a National Youth Commission that can influence policy related to youth in South Africa. 9/

129. Although legislation seldom requires that the views of children be taken into account in matters affecting them, the High Court, as upper guardian of all minors and the only court that can act in matters relating to the status of the child, must always act in the child's best interests. Where appropriate, the views of the child can be obtained.

In divorce matters

130. The Divorce Act (1979) provides that a court, in granting a decree of divorce, must ensure that the interests of minor or dependent children are taken care of and for this purpose may appoint a legal practitioner to represent the child or children at these proceedings. The Office of the Family Advocate and the Family Counsellor speak on behalf of children in divorce and related proceedings.

In adoption matters

131. The Child Care Act (1983) provides that a children's court must be satisfied that children over the age of 10 years consent to the adoption and understand its consequences.

In criminal matters

132. The South African Law Commission's Project Committee on Juvenile Justice will expand the role of the child in the juvenile justice process, allowing him or her to express his views and encouraging him or her to assume responsibility for a crime. The views of the child are also given due weight during diversion of juvenile offenders.

133. Where a child is accused of a crime, he or she is given an opportunity to disclose and listen to evidence, cross-examine witnesses, address the court and lead evidence before sentence.

134. In a criminal trial the views of a child witness are taken into consideration.

135. A child may lodge an appeal if not satisfied with a decision by the court. A child witness may give evidence under oath and be cross-examined by the defence. A child can also benefit under the Witness Protection Programme.

In schools

136. The South African Schools Act (1996) makes certain provisions for representation of learners in schools (see chap. VIII).

In institutions

137. The new child and youth care system provides for the full participation of young persons in the development of the Plan of Care in service delivery and in making changes to the Plan. Furthermore, children will be heard with regard to complaints and will have special rights that will have to be protected.

IV. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality (art. 7)

1. Legal and constitutional context

138. The Constitution of South Africa provides that: "Every child has the right ... to a name and a nationality from birth ...".

Registration of births and legal issues affecting the naming of children

139. The Births and Deaths Registration Act (1992) requires that the birth of every child be registered. To be registered, the child must be given a

surname and forename. Where parents are married, the surname is that of the father of the child. In the case of an extramarital child, the surname is that of the mother, except by joint request of both parents.

140. If the parents of an extramarital child marry each other after the registration of the birth, the register may be altered and the birth registered as if the parents were married to each other at the time of the birth.

141. Adopted children take on the surname of their adoptive parents once the adoption order is finalized.

142. A Bill on the Powers of the Natural Fathers of Extramarital Children is currently before Parliament. It provides that the father has the right to be notified of the impending adoption of his extramarital child. This may impact on the naming of the child.

Legislation affecting nationality

143. The Domicile Act (1993) provides that children can acquire the domicile of the mother. Previously, children could only acquire the domicile of the father.

144. The South African Citizenship Act (1995) provides that citizenship is determined by birth or parentage in equal measure. Both parents must consent when a child travels outside South Africa.

145. In 1996, the Government granted amnesty to nationals of the South African Development Community (SADC) region in certain circumstances. It also acceded to the Convention relating to the Status of Refugees (1951), the Protocol relating to the Status of Refugees (1967) and the Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa (1969). 10/ Children of refugees can acquire citizenship if their parents are granted refugee status. Whatever the status of the father, the child of a South African mother is a South African citizen by birth.

146. Asylum-seeking children are governed by the Alien Control Act (1991) and the Alien Control Amendment Act (1995).

2. Context and implementation

Registration of births

147. There are still large numbers of children in South Africa whose births are not registered and an increasing number of late registrations. 11/ Amongst the several factors affecting registration is level of literacy and access to registration centres. In addition, for many South African citizens, the importance of registering the births of their children is only realized when they apply for services.

148. Facilities for registration are mainly based in urban areas and inaccessible to those living in rural areas. There is also administrative inconsistency between what was formerly mainstream South Africa and the former

"homeland" areas. 12/ Government is attempting to solve this problem by opening up offices in previously disadvantaged areas and deploying mobile units in rural areas.

Refugees

149. May 1997 figures indicate that 3,431 people have been formally granted refugee status in South Africa, 6 per cent of whom are children. Various programmes for refugees exist. The figures on the granting of refugee status demonstrate a high percentage of rejected or outstanding applications (see also chap. VIII).

3. The way forward

150. Education on the need to register the birth of children is vital.

151. Recommendations aimed at increasing access, particularly in rural areas, include mobile clinics and the involvement of hospitals and clinics in the registration of births.

152. Continuing harmonization of administrative differences is required.

B. Preservation of identity (art. 8)

1. Legal and constitutional context

153. The right to preserve one's identity is not explicitly provided for in South African legislation. The constitutional requirements relating to name and nationality apply.

154. There are no legal impediments preventing children from changing their names if they wish, with the consent of their parents or legal guardian.

2. Context and implementation

155. During the first democratic election in 1994, efforts were made to ensure that as many citizens as possible applied for identity books to allow them to vote. Identity books were supplied free of charge. This provided some basis for the registration of persons who had been exiled or displaced during the liberation struggle and, in the process, advanced the legal status of their often stateless children.

156. Children are required to carry identity documents from the age of 16 years. 13/ A new development entitles children to carry their own passports and no longer obliges them to travel on their parents' passports.

3. The way forward

157. Services enabling people to apply for identity documents needs to be made widely available, especially in rural and marginalized areas.

C. Freedom of expression (art. 13)

1. Legal and constitutional context

158. The Constitution provides that:

"(1) Everyone has the right to freedom of expression, which includes:

(a) freedom of the press and other media;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity; and

(d) academic freedom and freedom of scientific research.

"(2) The rights in subsection (1) do not extend to:

(a) propaganda for war;

(b) incitement of imminent violence; or

(c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

159. The Constitution recognizes 11 official languages. A child has the freedom to express himself or herself in the language of choice.

160. The South African Schools Act (1996) provides that the governing bodies of public schools may adopt a disciplinary code of conduct after consultation with the learners, parents and educators of the school and after taking into consideration guidelines provided by the Minister of Education. The Act further provides for the representation of learners on learner representative councils in all public schools than enrol learners in the eighth grade and higher. It also provides for learners to be represented on the governing bodies of public schools, where they may participate in decisions on matters which affect them (see further chap. VII).

2. Context and implementation

The media

161. The media in South Africa are independently owned and run, and are self-regulatory. NGOs play a prominent role in lobbying for child-friendly media.

162. The Press Ombudsman (which replaced the old Press Council in 1997) provides organizations involved in children's issues with an avenue to lodge complaints on the way children, particularly the girl child, are portrayed in the media.

163. The SADC Southern Africa Summit on Children and Broadcasting (1996) drafted a Broadcasting Charter to promote the child's right to freedom of expression. 14/

Schools

164. The representation of learners in schools sometimes meets with resistance from teachers. This position is slowly changing.

Children's forums and hearings

165. Children's forums are on the increase. Through various Street Law programmes, children are encouraged to express their views. Various other activities dealing with child participation are planned or have been implemented.

166. The National Children's Rights Committee has created a forum for children. This has given rise to a Children's Charter which has recently been updated, together with soon-to-be-launched programmes through which children will meet and discuss their views. A number of community-driven initiatives also exist.

Youth Parliament

167. The Youth Commission hosts an annual Youth Parliament which allows children to meet ministers and members of Parliament to express their concerns and to engage in role plays.

Truth and Reconciliation Commission hearings

168. The Truth and Reconciliation Commission conducted a number of special children's hearings on the human rights violations which affected children under apartheid (see also chap. VIII).

3. The way forward

169. Adults, especially teachers and other care givers in schools, need to be sensitized to the notion of self-expression by children.

D. Freedom of thought, conscience and religion (art. 14)

1. Legal and constitutional framework

170. The Constitution states that:

"(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

"(2) Religious observances may be conducted at state or state-owned institutions, provided that:

(a) these observances follow rules made by the appropriate public authorities;

(b) they are conducted on an equitable basis; and

(c) attendance at them is free and voluntary.

"(3) (a) This section does not prevent legislation recognizing:

(i) marriages concluded under any tradition, or a system of religious, personal and family law; or

(ii) systems of personal and family law under any tradition or adhered to by persons professing a particular religion ...".

171. In addition, the Constitution provides for the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. This is still in the planning stage.

2. Context and implementation

172. Public schools are making a start in introducing these rights. Some schools (usually private schools) focus on specific religious teachings. In the past, the majority of State schools were obliged to practise what was described as "Christian National Education", largely excluding other denominations and religions.

3. The way forward

173. The rights of children, as enshrined in both the Convention and the Constitution, must be included in the school curriculum. Curriculum 2005, a five-year plan to phase in a new school curriculum in South Africa, includes rights education (see further chap. VII).

174. Teachers and other people working with children, however, also need appropriate training. At the moment this takes place on an ad hoc basis. It needs to be coordinated and intensified to ensure a wider outreach.

175. Parents need to be educated about and sensitized to the rights of their children.

E. Freedom of association and peaceful assembly (art. 15)

1. Legal and constitutional framework

176. The Constitution states that: "Everyone has the right, peacefully and unharmed, to assemble, to demonstrate, to picket and to present petitions" and that: "Everyone has the right to freedom of association".

2. Context and implementation

177. Since the inception of the new government in 1994, demonstrations, marches and other forms of protest have been permitted and have generally been peaceful. 15/

178. Over the past three years a number of marches involving children and child rights activities have taken place to highlight the high incidence of crimes against children, particularly sexual abuse.

F. Protection of privacy (art. 16)

1. Legal and constitutional framework

179. Section 14 of the Constitution states that:

"Everyone has the right to privacy, which includes the right not to have:

(a) their person or home searched;

(b) their property searched;

(c) their possessions seized;

(d) the privacy of their communications infringed."

180. Conditions under which search and seizure may be carried out are further provided for in the Criminal Procedure Act (1951). These conditions apply to children as well as adults.

181. The Interception and Monitoring Prohibition Amendment Act (1996) prohibits the interception of communications and the monitoring of conversations except in prescribed circumstances as authorized by the High Court under certain conditions. 16/

182. The common law also prohibits the impairment of dignity through criminal remedies such as crimen injuria, criminal defamation, public indecency and indecent assault. Civil remedies exist in respect of defamation.

2. Context and implementation

183. In the past, the right to privacy was regularly invaded through the agency of political laws which ignored human rights. Since 1994, the new government and the public are rightly vigilant on the introduction and monitoring of measures that infringe privacy, amongst other things.

Children in institutions

184. Children placed in institutions for treatment must be protected from violation of their privacy. Where these laws are violated, children have recourse to the law. Despite this, a Cabinet investigation into the conditions of child facilities in 1995 disclosed serious violations of privacy and human dignity (see under The right not to be subjected to torture, inhuman and degrading treatment or punishment). Children in prisons, detention facilities and reformatories also suffer from the infringement of privacy.

Homeless children

185. Despite constitutional protection, homeless children remain vulnerable to abuse by law enforcement officials. Efforts have been made to provide the police with training on the Convention. To this end, the United Nations juvenile justice documents have been simplified and contextualized.

Children living in poor socio-economic conditions

186. In addition to abuses in the criminal justice system, socio-economic conditions also affect the right to privacy. Children living in informal settlements usually share a room with the entire family. Homeless children are in a worse condition, without security of shelter or the luxury of privacy.

3. The way forward

187. Training for officials within the criminal justice system needs to be intensified, especially with regard to children's rights.

188. Human rights are being included in the school curriculum in order to empower children about their rights.

189. There are programmes aimed at assisting homeless children in understanding their rights.

190. The Government has a housing programme aimed at the provision of homes for families. There is still an enormous backlog. Greater efforts needs to be made to integrate homeless children into communities.

G. Access to appropriate information (art. 17)

1. Legal and constitutional provisions

191. The Constitution states that:

"(1) Everyone has the right of access to:

(a) any information held by the State, and

(b) any information that is held by another person and that is required for the exercise of protection of any rights.

"(2) National legislation must be enacted to give effect to this right and may provide for reasonable measures to alleviate the administrative and financial burden on the State."

192. In addition, the Constitution states that: "Everyone has the right to a basic education ... in the official language or languages of their choice". The South African Schools Act (1996) states that it is compulsory for every child to attend school from the age of 7 to the age of 15.

193. The national legislation required in terms of subsection (2) of the Constitution (above) is being prepared for introduction in Parliament.

194. Previous censorship legislation has been replaced with the Films and Publications Act (1996). Although the Act allows adults access to a wide range of previously prohibited material, it attempts to protect children. Information considered inappropriate for children is, in some cases, restricted. Films are rated both at commercial outlets, as well as on television. Some material, such as child pornography, is banned. Certain print media considered inappropriate for children is required to be sealed to prevent children from accessing them easily. Penalties are imposed on persons violating this provision. However, in the case of electronic media. there is no legislation to restrict information considered inappropriate for children.

2. Context and implementation

Schools

195. Resources are available in some schools, allowing for access to written and electronic material. This is not, however, the case in the historically disadvantaged sectors. Civil society has made attempts to address these shortcoming in various ways.

196. Recently schools have begun incorporating cultural items and vernacular languages as part of the school curriculum.

The media

197. The monitoring of information considered inappropriate for children is inadequate. Inappropriate print material is available at local stores, although it is required to be sealed in plastic. South Africa shares the global concerns about children's ease of access to inappropriate information on the electronic media, including the Internet. Furthermore, whilst age restrictions exist in commercial cinemas, monitoring is random as the production of proof of age is not required.

198. As indicated, although the broadcast media give guidelines for films shown, parents and caretakers must take responsibility for monitoring the programmes watched by children in their care.

199. Radio and television networks allocate time to inform and educate children. However, it must be noted that many children do not have access to the electronic media, particularly television. Some newspapers also carry items of educational interest for young people. The NCRC has met with members of the media to advocate a heightened emphasis on children's rights.

200. The high illiteracy rate in South Africa means that many children live in families where one or both parents cannot read or write. This affects their access to written information from an early age, which re-enforces disparities.

3. The way forward

201. Many schools lack the basic equipment and facilities to ensure appropriate learning.

202. Monitoring needs to be intensified, especially in public places where children have easy access to information considered inappropriate for child audiences. This needs to be coupled with penal sanctions.

203. Internal educational olympiads have been organized but need to be more accessible, more frequent and better publicized. Likewise, symposiums and fairs need to be coordinated in order to ensure as wide a variety of information as possible. These events need to be mobile in order to reach children in marginalized and remote areas.

H. The right not to be subjected to torture, inhuman and degrading treatment or punishment (art. 37 (A))

1. Legal and constitutional provisions

204. The Constitution gives everyone the right to respect and to protection of their dignity. It also accords right to freedom and security of person which includes the right: "not to be deprived of freedom arbitrarily or without just cause; not be to detained without trial; to be free of all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way".

205. Corporal punishment, previously used widely to punish juvenile offenders, was found unconstitutional by the Constitutional Court. 17/

206. In addition, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been ratified by South Africa. Confirming legislation was before Parliament at the time of reporting.

207. No person under the age of 18 years may be declared an habitual criminal.

2. Context and implementation

208. In 1995 the Government established the IMC to manage the process of crisis intervention in and transformation of the child and youth care system. As part of its work the IMC investigated State residential care facilities which included "places of safety", schools of industry and reform schools. Not all residential care facilities were investigated. Problems in State facilities relate to the NGO sector as well as government. The IMC found that the general condition and standard of care falls short of the standards set both by United Nations instruments and the Constitution. The following conditions were reported:

(a) Inequality. Disparities were found in the treatment of children and youth in residential facilities under investigation in terms of race and budgetary allocation. These included: standard of care; methods of

discipline; extent of freedom; length of stay; contact with families and community; access to appropriate education; developmental and treatment programmes, and human resources;

(b) Lack of respect for privacy and human dignity. Serious intrusions into the privacy and human dignity of children and youth were found in relation to sanitary facilities, strip searches and lack of privacy relating to phone calls and correspondence;

(c) Freedom and security of person. Breaches in this regard included the widespread use of isolation cells, corporal punishment and punishment/rewards systems;

(d) Assaults and abuse. A number of children in all categories of residential facilities claimed to be the victims of emotional, physical or sexual abuse by members of staff and other young people.

209. "Secure Care Facilities" is a new residential care option and approach for young people in trouble with the law and was launched in 1995 to provide an appropriate alternative for young people who need to be held while awaiting trial. Two such facilities have already opened, one in Gauteng and one in the Eastern Cape.

210. Education, training and human rights education have begun, involving the public, children, personnel in institutions, magistrates and court personnel who work with children.

3. The way forward

211. The IMC highlighted the need for urgent transformation of the existing child and youth care system. Relevant government departments, in partnership with NGOs, are in the process of addressing the recommendations. A specific outcome arising out of the Cabinet investigation of the residential care system is "Project Go" which aims to unblock the residential care system, reprioritize services and ensure that young people will not have to await trial in prisons and police cells as of April 1998.

212. In addition, children should be informed of their rights to help them resist all forms of violence, as well as to identify violence against themselves. This would enable them to take action on their own behalf by reporting violence at an early stage.

V. BASIC HEALTH AND WELFARE

A. Introduction

213. In April 1994, the new democratic Government inherited a health system characterized by fragmentation and inequities. In addition to a three-tier government structure, with different roles and functions allocated to national, provincial and local levels, apartheid policy dictated the delivery of separate services to different population groups and geographical areas

throughout the country. "Homelands", "own affairs" and "independent States" resulted in a delivery system characterized by no fewer than 17 different departments of health in an uncoordinated public health sector.

214. This complex and unsatisfactory system operated against a backdrop of discriminatory and deeply inequitable standards of living, inadequate shelter, unclean water and lack of sanitation are among the major causes of mortality among poor children.

215. The transformation of the health services depends on restructuring, reorganizing and redressing past inequalities. One of the major challenges faced by the Health Department after 1994 was the maldistribution of health facilities and human and financial resources, a large proportion of which resided in the private sector. 18/ Although the health budget in 1996/97 was R17.2 billion, some 10 per cent of total government expenditure, private health care still accounts for some 58 per cent of the total amount spent on health in South Africa. Hence 38.2 per cent of total spending provides care for about 77 per cent of the population. Within the public sector, 76 per cent of health care funds were expended on acute hospitals - with academic and other tertiary hospitals accounting for 44 per cent of the expenditure. In contrast, only 11 per cent was spent on community-based primary health care facilities. Furthermore, it has been demonstrated that a considerable district-to-district variation exists, with public health expenditure per person in the richest districts 3.6 times more than in the poorest districts.

Restructuring the National Health System

216. The aim of the new health policy is to address these inequities and inconsistencies. Health policy formulation was undertaken by national Government in consultation with provincial governments and other stakeholders and experts in the health sector who were able to provide technical advice and support. The outcome of these consultations was an official policy document entitled "Restructuring of the National Health System for Universal Primary Health Care" (January 1996), which provides an outline of the envisaged organization of the primary health care delivery system. The policy document highlights the following priorities for restructuring the health care system:

(a) More efficient and effective use of existing resources;

(b) Improved access to and a better quality of services, particularly at primary care levels and in currently under-resourced geographic areas;

(c) Promotion of the redistribution of resources between levels of care within the public sector;

(d) Redistribution of resources currently used only by the private sector to a broader section of the community, and

(e) Promotion of cost-containment efforts within the private sector.

217. These priorities have been carried over into the broad framework of maternal, child and women's health, and so form a basis for policy formulated around child health.

218. The framework of goals represented South Africa's first systematic effort to document its goals for child health. Child health policy was formulated in accordance with the principles of the Convention and the goals embodied in the World Summit goals for children, the implementation framework for the Convention.

Legal and constitutional framework

219. In addition to section 28 of the Constitution which provides, inter alia, for the right of children to "basic health care services and social services", section 27 of the Constitution states that:

"(1) Everyone has the right to have access to:

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

"(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

"(3) No one may be refused emergency medical treatment."

220. A new health bill, which aims to give legal content to the transformation of the health system, was in draft form at the time of reporting and has been the subject of lengthy consultation. Other health legislation has been passed (most significantly from the point of view of women's rights, the Choice on Termination of Pregnancy Act (1996)).

221. Current status of child health and welfare: 19/

66 per cent of all deaths due to diarrhoeal disease occurred in children under five;

13 per cent of all deaths due to respiratory diseases occurred in children under the age of five;

11.2 per cent of deaths due to all causes occurred in children under the age of five;

The infant mortality rate in rural African communities was estimated to be 94 per 1,000 live births; 20/

The under-five mortality rate was estimated to be 115-138 per 1,000 live births;

Of the total number of AIDS cases reported up to December 1994, 10.7 per cent were children;

23 per cent of children under six are stunted, due to long-term malnutrition;

15.2 per cent of all African teenage females become pregnant;

Approximately 4 million children have some form of disability.

B. Health and health services

Services

222. District development is the cornerstone of the strategy to promote access to essential health care by all South Africans. The proposed district health team will be the cog which drives its implementation. Although proclamation of districts has been largely completed, albeit only very recently in some provinces, providing the teams with the necessary capacity is still in progress.

223. The implementation of free health care services at all levels for children under the age of six years and pregnant and lactating women has been a major achievement in promoting access to health care. In April 1996, free health care at the primary level was extended to all South African residents. This has significantly improved access and contributed towards the promotion of greater equity in the health sector.

224. Formal midwifery (obstetric) services are constantly under review, and the policy of providing free health care to pregnant and lactating women has markedly improved attendance at antenatal care facilities. Although the majority of pregnant women now attend antenatal clinics, lack of proximity to health facilities and inadequate transport result in many unsupervised home births, hence perinatal and maternal mortality remain unacceptably high. Administrative and legislative processes for compulsory notification of all maternal deaths are in progress, as are efforts to link corrective action to the mortality audit. These plans and their impact will be carefully monitored by a dedicated committee of expert health professionals in this field.

225. The lack of primary health care facilities in areas historically neglected by the State remains a constraint. However, during the two years under review, problems have been partially overcome by the construction of 300 primary-level care clinics in previously neglected areas. However, transport costs to distant facilities are often beyond the means of people living in rural communities. Mobile clinics - which render largely preventive and promotive care - fill this gap only to a limited extent, and much more work is needed. Generally, strategies to overcome poverty are being matched by the development of primary health care infrastructure and services. In some areas, community health workers (CHWs) play an important role by disseminating knowledge and skills for use at household level. Although

traditional birth attendants are not formally recognized, informal midwifery assistance is rendered for home deliveries. Pilot projects are attempting to draw these important health workers into the formal sector.

226. Hospital care at both secondary and tertiary levels is generally of a fairly high standard in metropolitan areas, while hospital care in rural areas is dependent on improvements in the infrastructure.

Special programmes within an integrated framework

227. The Integrated Management of Childhood Illnesses (IMCI) initiative is a response to the unacceptably high number of childhood deaths from preventable causes and has resulted in the development of guidelines. In the first phase of this national plan, the focus is on diarrhoeal disease, acute respiratory infections and nutrition. Agreement on case management guidelines has been reached, implementation strategies are in place and training has begun. Plans are in place to ensure an incremental approach to the further development of guidelines for managing other priority childhood conditions. A technical advisory group has been appointed to assist the Department of Health with the implementation of the IMCI as well as other child health issues. The technical advisory group consists of representatives of academic and training institutions and international agencies.

228. The Department of Health's Directorate for Mental Health and Substance Abuse deals with problems relating to children, youth and women. Guidelines for the management of victims of violence have been drawn up, and development of norms and standards to guide quality care for children in mental health institutions is in progress.

229. Management of mental health problems is almost entirely confined to tertiary health facilities. In several of the provinces, policies and guidelines are being developed to aid in the identification and prevention of mental health problems at primary level. One of the most important limiting factors is the lack of appropriately qualified mental health professionals with a good knowledge of the most common African languages and cultural practices.

230. The Department of Welfare provides support to children who are substance-dependent, as well as providing a care dependency grant for those with mental and other forms of disability.

231. Close collaboration with the Department of Education seeks to ensure that mental health issues, such as substance abuse and child abuse, are included in the school curricula. The Welfare Department also has a large role to play in addressing these issues. Its policies and programmes are clearly spelt out in chapter VI. In addition, NGOs make critical contributions in the areas of counselling, community-based promotion and prevention programmes, and support for clients and their families. The financial support to NGOs for delivery of such important services remain a vexed issue (see also chap. I).

232. Prevention of immunizable conditions is a key component of South Africa's child health policy. A National Advisory Group on Immunization

and an annual Expanded Programme of Immunization (EPI) conference advise on action and policy. A well-organized structure at both national and provincial levels is responsible for implementation of policy throughout the country. The National Immunization Programme Review, conducted in September 1994, focused on qualitative aspects of immunization. There are plans to provide immunization at primary health care facilities on a daily basis and to reduce missed opportunities at all public hospitals and clinics throughout the country. Special areas of concern are measles, poliomyelitis, Haemophilus influenzae and neonatal tetanus. In regard to these it should be noted that:

(a) A national measles vaccination campaign was held (in conjunction with the national polio campaign) in 1996. The age targeted differed from province to province, but all included children aged 9-59 months. More than 7 million doses of measles vaccine were given, reaching an estimated 88 per cent of the targeted population;

(b) The national polio campaign aimed at the achievement of a polio-free status for South Africa and included Acute Flaccid Paralysis surveillance, which was initiated in January 1995. A polio-vaccination campaign took place in almost all provinces in June/July 1995. A second polio vaccination campaign, in August and September 1996, employed special strategies in order to reach those not normally reached by routine services. 21/ In excess of 9.6 million doses of polio vaccine were given and, in the two rounds, an estimated 94 per cent and 77 per cent of under-fives were reached. In spite of these results, reservations were expressed about the value and impact of such mass immunization campaigns, with special concerns raised about the diversion of staff and the impact on their routine duties;

(c) Since 1995, the national Expanded Programmes for Immunization has included Haemophilus influenzae B.

233. Although the rate of neonatal tetanus is less than 1:100,000 in this country, in some districts it is in the vicinity of 1:1,000 live births. In 1993, a hospital-based study revealed that the notification rate was 10.7 per cent. It is unlikely that the situation has improved considerably since then. Attempts are being made to establish a reliable surveillance system and to reformulate policy using a consultative process. As a consequence of lack of infrastructure, some 20-30 per cent of deliveries in rural areas still occur at home. Training of midwifery attendants to ensure hygienic birthing practices and early help-seeking in case of problems is a further component of the intervention.

234. The National Oral Health Policy in South Africa has a strong bias towards the preservation of children's dentition and outlines the functions at the various levels of health care. Although the main constraint is a lack of human resources, it is anticipated that this will be resolved when graduates with appropriate qualifications become available from several of the tertiary education institutions.

235. A National Health Promoting Schools Committee has been established to coordinate all health-related activities in schools and is in close communication with its African regional counterpart and with global

initiatives in this area. One outcome is the piloting of the child-to-child approach in bringing together the education and health sectors, while at the same time reaching the educational goals of empowerment and problem-based learning.

236. Within the existing school curriculum, health education has a well-documented syllabus and is a compulsory subject. The outcome-based Curriculum 2005 features health-related matters in several learning areas, including issues related to sexuality and fertility control. (See further chap. VII).

237. The Department of Education, in conjunction with other sectors and NGOs, has developed an Early Childhood Development Policy document, which includes the training of relevant personnel. A three-year pilot project is running at present. (See further chap. VII).

C. National child health priorities

Children with disabilities

238. There are no accurate data reflecting the number of children with disabilities in the various categories, but isolated surveys of the problem suggest that there are about 4 million children in the country who experience different forms of disability. The Department of Health has commissioned a national disability survey to establish the prevalence of disability, disaggregated for type of disability, age and gender, to address this gap.

239. There are 36 schools dedicated to deaf children, although currently only a small minority of these use Sign as a medium of instruction. There are 18 schools for blind children, 19 for children with cerebral palsy, 48 for children with serious behavioural problems, and 149 for those with varying grades of mental disability. There are also schools for children with epilepsy, autistic children and children with physical disabilities.

240. National education policy proposes mainstreaming the education of children with disabilities in public schools. However, at present, there are very few schools equipped to accommodate children with disabilities.

241. A conference report, "The Rights of People with Disabilities with a Special Focus on Children", highlights the many and often serious problems faced by children with disabilities and their families. A draft National Integrated Strategy on Disability has been published and a draft policy White Paper has been prepared by the Office on the Status of Disability in the Office of the Deputy President and will be discussed by Cabinet in 1997. The White Paper will identify the role of all government departments in relation to disability.

242. A draft policy for the management and prevention of birth defects is under discussion, and a policy document on the management of children with disabilities is being drafted.

243. A sub-directorate on Disabilities has been established in the Department of Health, and a technical committee has been appointed to advise on the

development of rehabilitation policy, with children as the principal focus. A "Rehabilitation Package for Primary Level" has been compiled. 22/ Staff are being employed and rehabilitation workers trained, with an emphasis on home-based care, through the transfer of skills to household (and neighbours). NGOs and CBOs play a significant role in this endeavour.

244. Access to health care facilities is being addressed by the Access to Health Facilities Project, which was launched on the International Day of the Disabled in 1996 to raise general awareness of this need.

245. An assistive devices project aims at reducing the backlog in the supply of wheelchairs and hearing aids by 50 per cent. Awareness-raising is an important component of this project.

246. Currently no mechanism exists to ensure that students entering the health or teaching profession acquire the skills and knowledge to equip them adequately to provide for children with disabilities. In order to raise the proficiency of professionals, contributions to and monitoring of the curricula of the relevant institutions are planned.

247. Most tertiary hospitals run regular clinics for children with the common disabilities, such as Down's Syndrome and cerebral palsy. NGO support groups also assist children and their families with all the common disorders.

248. The overall coordinating body is the South African Inherited Disorders Association. Unfortunately, very few of these groups reach out into the rural areas.

249. A National Commission on Special Needs in Education and Training and a National Committee for Education Support Services have been established. A summary of public discussion is planned and will outline in some detail the current problems and recommendations to be submitted to the relevant sectors.

Youth health

250. In order to address the problem of teenage pregnancy and STD/HIV infection in adolescents, the Department of Education has included life-skills education in the formal school curriculum. The Department of Health has prioritized access to STD treatment and barrier methods as key strategies. Condom distribution is under way, the introduction of the female condom has begun, and primary health care and family planning staff have already been trained in its use. The Department is also spearheading the introduction of a syndromic approach to STD management which does not rely on sophisticated laboratory technology, and clinic management training is in progress. A Task Team for Youth and Adolescent Health has been appointed, and a network established with provincial officials who specifically deal with youth and adolescent matters.

251. The Department of Welfare's policies and programmes for youth are contained in the recommendations of the IMC.

D. Issues of special concern

Environmental degradation

252. The faecal contamination of water systems has serious implications for health management. Industrial effluent has also had serious consequences in certain regions, but adequate legislation appears to have brought this under control. On the other hand, those administering the Atmospheric Pollution Prevention Act (1965) have not been in a position to prevent industries being erected up-wind from residential areas, with unfortunate consequences. Lead-free fuel has only very recently come onto the market and, in certain vulnerable groups, unacceptably high blood levels have been encountered. Solid waste disposal is similarly unsatisfactory particularly in informal settlements and in those local authorities previously located in the so-called homelands. Sites are sometimes accessible to scavenging children. A revised environmental health policy is being formulated, calling for intersectoral collaboration, with civil society playing a significant role.

Tobacco

253. All tobacco products and promotional material are legally obliged to display an unequivocal statement on the harmful nature of tobacco, particularly to the unborn and young child. It is illegal to sell tobacco products to children under 18 years.

HIV/AIDS

254. The HIV/AIDS epidemic sweeping this country is of profound significance to the well-being of the children of South Africa. It is estimated that there will be no fewer than half a million orphans whose parents have died of AIDS by the beginning of the next century. Not surprisingly, it is the older adolescent and young adult who is particularly vulnerable to this infection. Rape and the sexual abuse of children are increasing rapidly and are a matter of grave concern.

255. A national HIV survey of women attending antenatal clinics of the public health services was carried out in October/November 1996. 23/ Its objectives were to obtain point prevalence of HIV at national, provincial, and regional levels as well as per age group. Seven of the nine provinces were found to have higher prevalence than in 1995, the remaining two being slightly lower than in the previous year. The result of the survey confirm the trend of a growing HIV epidemic, which first rises at an exponential rate before slowing down.

(a) Provincial prevalence rates range from 1.65 to 25.13 per cent, the latter showing a sharp increase from 8.30 per cent in 1995 in that particular province;

(b) The under-30 age group accounts for 45.51 per cent of the total, with 12.78 per cent prevalence in those under 20 years. It would appear that this subset is at increased risk of contracting HIV and reflects those with the most recent infections;

(c) It is estimated that a total of 2,391,164 adults and 57,077 babies are infected with HIV. These estimates are based on certain assumptions that the prevalence rates are representative of the South African population, taking gender variation into consideration and assuming that 30 per cent of babies born to HIV positive mothers are infected;

(d) In the most severely affected areas, up to 30 per cent of paediatric hospital beds are now occupied by AIDS patients, who initially present with diarrhoeal disease or respiratory infection. Management focuses on the immediate and concomitant fungal infections as antiviral medication is well beyond the scope of the health budget of the country. In several of the larger centres, hospices provide for the terminal care of children.

256. The South African National AIDS Programme consists of all the traditional elements, which constitute the response of any country. Following on the recommendations of the National STD/HIV/AIDS Review conducted during 1997, an expanded programme needs to be launched, which will draw in more sectors than previously and give particular attention to development and gender issues.

257. An important strategy is the Life Skills Education Programme in schools, which was preceded by specific teacher training.

258. Proposals from the Department of Welfare include strategies to develop programmes to encourage foster care and adoption of HIV/AIDS orphans within the broader family and community. Expansion of the current welfare systems of special care and foster care grants might be suitable options in this regard. The new policy on the child and youth care system will be the framework for addressing the needs of orphans. This makes provision for community-based care alternatives, as well as appropriate residential care when absolutely necessary.

Nutrition and breastfeeding

259. Malnutrition amongst children remains endemic in the country. However, the overall prevalence of life-threatening forms of protein energy malnutrition has undoubtedly decreased.

260. Underlying this are the poor socio-economic factors contributing to childhood malnutrition in what is, after all, a food exporting country. One national survey 24/ found that 23 per cent of African respondents said they were too poor to feed their children adequately.

261. The response of the Health Department has been the preparation of a draft report with recommendations for an Integrated Nutrition Strategy for South Africa. Components of this strategy include:

(a) The promotion of breastfeeding;

(b) Micronutrient intervention (including a national food fortification plan);

(c) A primary school nutrition programme; and

(d) Strategies to promote household food security and safety.

262. Breastfeeding was actively promoted during 1996. A draft breastfeeding policy is in the process of being finalized and includes recommendations for HIV positive mothers.

263. In July 1996, a National Food Fortification Workshop was held with all major stakeholders in order to reach consensus on major food fortification issues, ti identify strengths and constraints and to draw up a plan of action for South Africa. Draft guidelines for vitamin A supplementation to vulnerable groups have been compiled. Legislation on food-grade salt came into effect on 1 December 1996 together with relevant regulations for monitoring of compliance.

264. The Primary School Nutrition Programme (PSNP) reached nearly 5 million out of a total of 8.5 million pupils in 13,000 schools during 1996. More than 20,000 compensated volunteers from communities participated in project activities during the year.

265. Problems experienced with this programme include fraud and lack of financial management and administrative capacity which have prevented full implementation. A formal Nutrition Education Programme is being piloted in rural and peri-urban schools with a view to enhancing sustainability of the Primary School Nutrition Programme and for purposes of curriculum development.

266. During 1966, more than 1.3 million poverty-stricken people from across the country received aid from the Community-Based Programme of the Department of Health. The ultimate aim of this programme, which focuses on the poorest 3 per cent of the population, is to promote universal household food security. Direct food assistance such as soup kitchens and food parcels is making way for development-oriented community projects. Communities will, for example, grow their own fruit and vegetables to contribute to their nutritional needs. Nearly 2,000 such projects were implemented during 1996. Reorientation courses were conducted in seven provinces in order to accelerate implementation.

267. Two sets of food safety regulations have a direct bearing on the child: regulations requiring that salt be iodinated, and regulations relating to foodstuffs for infants, young children and children. The Department keeps abreast of the activities of the Codex Alimentarius Commission of the FAO in order to remain in line with international food standards.

E. Water and sanitation

268. In collaboration with the Department of Health, the Department of Water Affairs and Forestry has printed a booklet for distribution through schools and clinics. Its title is "Water and Sanitation: Towards a Healthy family".

269. The Department of Water Affairs and Forestry started its reconstruction and development programmes with the objective of providing potable water and improved sanitation to previously disadvantaged rural communities. By

May 1997, more than 1,000 projects were identified, which will pump water to more than 9 million people by the end of 1998, at a cost of R36 million. All these projects were implemented in a way designed to simulate local economies, create job opportunities and develop skills in communities. Apart from the direct benefit to children in the improvement of water supply, mothers and older children are relieved of the strenuous and time-consuming task of fetching water over long distances. The average time spent fetching water and fuel wood outside urban areas is 4.5 hours a day.

270. The Working for Water Programme, which involves the clearing of invasive alien plants, started in September 1995. It has created job opportunities for 6,686 previously unemployed people, 55 per cent of whom are women. Children benefit indirectly in that their living conditions improve as a result of increased household income. Arrangements are made for child care for those women employed who have small children. Several schools throughout the country have initiated water preservation projects which draw in children on a voluntary basis.

271. The sanitation programme is less advanced than the water supply programme in 1996, R75 million were allocated for sanitation projects. The Department of Water Affairs and Forestry is currently engaged in setting up delivery structures in all provinces. As pit latrines are a common form of sanitation in crowded informal settlements, the ground rapidly reaches capacity level. Where toilets do exist, men may refuse to share them with women and continue to use the surface. In the more densely populated areas, most of the rivers are heavily polluted. Gut parasite infection and schistosomiasis are thus common problems in many communities, affecting up to 90 per cent of schoolchildren. The South African Medical Research Council has done work in this field: two of the provinces are embarking on a parasite control programme amongst school children, partially funded by an international donor.

272. Community forestry is designed to address energy needs in a country where more than one third of the population (mainly in rural and informal settlements) still depends on wood as an energy source. Tree planting and nursery projects are implemented either by or with the participation of communities. School children and women's groups are primary participants in these projects. Children are involved in order to raise awareness of and "green" the environment, and to raise school funds. A total of 2,175 community projects (920 major and 1,255 minor projects) have been launched in all provinces.

F. Traditional practices prejudicial to health

273. Traditional practices have served various communities through the centuries. These practices affect all aspects of life, and many are beneficial. However, some - including some religious practices - are prejudicial to the health and well-being of children.

(a) Internal cleansing by herbs may be harmful. The alimentary tract is frequently targeted for the administration of potions: children in particular are frequently subjected to enemas containing anything from simple

household substances to very toxic herbal infusions which may result in death due to liver damage. Emetics are less commonly used on children, though frequently imbibed by adults for cleansing purposes;

(b) Children with respiratory symptoms are made to inhale fumes from herbs which are incinerated in an open fire;

(c) Scarification of the skin with subsequent application of "medicine" is very commonly practised, either as a preventive measure or to "release the disease" from a painful part of the body. The instrument - now usually a razor blade - cannot be considered as sterile and hence raises the potential risk of spreading HIV and the hepatitis B virus;

(d) Some preparations are applied to the umbilical cord stump: this practice appears to be waning;

(e) Breastfeeding may be curtailed or restricted under certain circumstances;

(f) As the bride price (lobola) is often quite excessive and beyond the means of the suitor, marriage is often delayed, resulting in children being born out of wedlock and in single-parent families.

274. It must be stressed that many of these practices are rapidly disappearing, particularly where health care facilities are readily accessible. Furthermore, there are many efforts by those practising allopathic health care to work with traditional practitioners.

275. Certain Eurocentric religious and other cultural and traditional practices could also be considered as prejudicial to the child's health and well-being. These include the practice of withholding transfusions of blood products and refusal of immunization.

276. Moreover, the concept of the nuclear family could be seen as harmful to children, when counterpoised with the tradition of the extended family. The latter is a practice which has widespread benefits for all its members, and for society in general. In extended families, the grandparents and other members of the family play an important role in supporting the development and care of the children. The involvement of these care-givers in plans to promote child health and well-being is essential.

G. Social security and child care services and facilities

277. The Welfare White Paper identifies a range of vulnerable groups of children in South Africa who require special attention:

(a) Very young children from birth to 36 months, and between three to six years;

(b) Children needing out-of-home care;

(c) Children with disabilities;

(d) Abused or neglected children;

(e) Children living on the streets;

(f) Working children;

(g) Children involved in substance abuse;

(h) Child survivors of violence;

(i) Undernourished children;

(j) Children of dysfunctional families.

278. There is no universal social security system in this country, due chiefly to budgetary constraints. The 1996/97 welfare budget amounted to R14.2 billion, slightly more than 8.2 per cent of total estimated government expenditure and 2.5 per cent of the total value of GDP. Given an estimated total population of 37.9 million, per capita welfare expenditure in 1996 was about R370 per annum.

279. The following means-tested grants are available: old age, disability, war veterans, maintenance and foster children grants. In addition, social insurance benefits are available to those who have contributed. These are limited, however: the unemployed, for instance, will receive the benefit for a total of only 26 weeks.

280. The foster grant is paid only in those cases where fostering has followed legal procedures. It does not apply to the many families who are fostering children on an informal basis. As described in chapter VI, the loss of the foster grant when a child is adopted by the foster parent discourages adoption and affects permanency planning.

281. Grants to "pensioners", in most cases, are used to support entire families and are commonly the only source of income for those families.

Child support grant

282. The State Maintenance Grant is the main source of support for child and family care and makes up 9 per cent of the total welfare budget (R1.2 billion). Formerly, it entitled all South African single-parent households with incomes below a certain level to a child allowance for a maximum of two children below the age of 18. The main problem with the grant was that it was biased in favour of White and Coloured groups and, for a variety of reasons, most African women were denied access. The system also discriminated against children who are not living in single-parent households.

283. The Lund Committee Report on Child and Family Support was presented to Cabinet in 1996. Based on the report, the following recommendations were adopted:

(a) There will be one uniform grant;

(b) Children under the age of seven who qualify through a means test will benefit;

(c) The grant will be payable to a primary care-giver of the child;

(d) The objective of the new grant system is to achieve equity and redistribution of available resources.

The fact that this new child support grant will only be available to children under the age of seven years has given rise to criticism for the NGO sector. The new grant will, however, reach 3 million children over a period of five years.

284. Over and above the State Maintenance Grant, there is a "private" maintenance system, whereby a mother is required to claim a subsidy from the father of the child. Even this system was racially segregated by the previous regime. For details on the private maintenance system (see chap. VI).

H. The way forward

285. Possibly one of the most important challenges in the health field is to resolve the tension of the inequitable distribution of funds between the primary, secondary and tertiary levels of health care In a country which has developed very advanced and sophisticated medical technology, such as transplant surgery and the treatment of childhood cancer to mention only two examples, it would be tragic to allow such expertise to slip into obscurity. On the other hands, it is patently obvious that there are still vast gaps in essential elements of primary health care that need to be filled urgently.

286. Linked to this is the importance of reforming the curricula of students in the health and caring professions in order to ensure that graduates are equipped with the necessary knowledge and skills adequately to handle the manifold health and social issues facing this country.

287. An efficient health information system is fundamental to monitoring and evaluating progress towards attaining the aims of the Convention: the challenge is to set up the necessary infrastructure. Minimum standards, practice guidelines and new quality-assurance processes are presently being developed to facilitate the implementation and monitoring of the child and youth care system in order to fulfil the requirements of the Convention.

288. Another urgent equity issue relates to communities living in remote rural areas. Even if primary health care facilities are successfully provided, health professionals are usually unwilling to work in rural areas. South Africa will have to look to other countries for answers to this universal problem.

289. The Department of Welfare is faced with the vexed issue of finding solutions to social problems, without the budgetary strength to provide a safety net social system.

290. For all sectors, the need to reach World Summit goals by the year 2000 is a daunting challenge.

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental guidance and responsibilities (arts. 5 and 18)

291. The White Paper for Social Welfare describes the "family" as individuals who, either by contract or agreement, choose to live together intimately and function as a unit in a social and economic setting. The family is the primary social unit which ideally provides care, nurturing and socialization for its members. It seeks to provide them with physical, emotional, social, cultural and spiritual security. This definition acknowledges the variety of family forms found in South Africa, including legally recognized marriages, as well as religious, customary and common law unions, and a large number of single parent relationships.

1. Legal and constitutional framework

292. The Constitution recognizes the right of the child to parental care, family care or alternative care when removed from the family environment. The Constitution also adopts the principle of the best interest of the child and states that, in all matters concerning children, their best interests must be paramount.

293. Parental and family responsibilities are determined largely by common law, although statute law sometimes also applies. At common law, parents have all rights and duties over their children, including the duty of support and the right to chastisement. They also have the right to administer a child's estate and to assist the child to perform juristic acts.

On guardianship

294. The Guardianship Act (1993) gives guardianship to both parents of a child born of a legally recognized marriage. The powers of guardianship can be exercised by each parent independently, with a few stipulated exceptions such as consent to adoption of the child. Where children are born out of marriage, guardianship and custody rest with the mother of the child, except where the mother is herself a minor. In such cases, guardianship of the child rests with her guardian, while she retains custody of the child. These common law arrangements concerning custody, guardianship and parental power prevail until the child turns 21 years, unless the child achieves majority earlier (e.g. by marriage).

295. The High Court is, at common law, the upper guardian of minors within its jurisdiction and can interfere with the exercise of parental power, even depriving parents of their rights over their child where this is in his or her best interests.

On the obligation to maintain children

296. Where parents who are able to maintain their child fail to do so, the children's court has the power to hold an inquiry. The Child Care Act (1983) does not refer to the best interest of the child as a basis for

decision-making, although it is generally accepted that this is a child-centred forum. However, the Act is presently under investigation by the South African law Commission.

297. In customary law, parents also have an obligation to maintain their children and, as long as they reside in the family home, children and minors fall under the control and leadership of the head of the family. Customary law recognizes broader rights and responsibilities and relies on the wider family for support and guidance. For example, the principle in customary law is that the children of a widowed woman have a right to maintenance from others within the family group, for example, from her late husband's family.

On divorce of the parents

298. On divorce, the High Court must be satisfied that provisions have been made for the welfare of any minor or dependent child. The Mediation in Certain Divorce Matters Act (1987) allows for an inquiry into the circumstances of the minor children by the Family Advocate, an office set up under the Department of Justice in each High Court jurisdiction. 25/ It is generally accepted practice for the Family Advocate to consult with the child and approximately 10 per cent of divorce cases require intervention by the Family Advocate. Upon divorce, maintenance orders for the support of children may be made and, although any order may be made regarding custody, guardianship and access, generally orders provide for custody for mothers, with access rights for fathers. Usually guardianship continues to rest with both parents. Joint custody orders are not common, but are possible. The consideration applied by courts empowered to grant divorces is the best interests of the child.

299. Counselling services for parties affected by divorce are mainly confined to urban areas and to those offered by NGOs.

2. Context and implementation

300. There is a variety of programmes on family life run by government departments as well as by churches, welfare organizations, schools, universities, commerce and industry and private individuals. These programmes are therapeutic, promotive and developmental in nature, depending upon the needs of the targeted community. Examples of programmes which provide for child rearing and parental responsibilities include the STEP programme (Systematic Training for Effective Parenting), the Botswadi parental guidance programme, women and stimulation programmes which focus on child care and parental guidance, and adult education and life skills programmes for farm parents.

Government welfare programmes

301. The majority of families did not benefit from welfare services in the past and were not always able to fulfil their parental responsibilities. The focus of social welfare services is now on the most disadvantaged and marginalized families.

302. The Department of Correctional Services has completed the Parental Guidance Programme (a module of the Marriage and Family Programme) which will be distributed to social workers in prisons. In addition, the provincial Departments of Welfare provide reconstruction services to parents where children have been placed in alternative care and also provide programmes to foster parents to provide them with skills to care for children from troubled backgrounds.

303. The Department of Welfare has established a Flagship Programme for Unemployed Women with Children under the Age of Five Years, primarily in the rural areas. The aim of the programme is to increase educational and training opportunities for women so that they can provide for the basic needs of their families, as well as delivering developmentally appropriate education to their children so as to increase their chances of achieving and learning. The programme is, however, still in its infancy.

304. The Inter-Ministerial Committee on Youth At Risk (IMC) has included, amongst its pilot projects, a Family Preservation Project and a professional fostering pilot project. Both are aimed at giving support to families and extended families, or to alternative care givers. NGOs are also involved in programmes for the advancement and empowerment of women.

Early childhood education

305. It has been estimated that 9-11 per cent of children from birth to six years have access to public or private early childhood development facilities. Only 2 per cent of three year olds have access to full day care and home based, private or community funded facilities. The majority of children are looked after by parents, relatives, friends, siblings, domestic workers or no one at all. There are few after school facilities available. There are also geographical, racial and urban/rural disparities in access to substitute care while parents work, and the Department of Welfare is attempting, through programmes, to eliminate some of these disparities. The Department's assistance is given to service providers mainly through subsidies: in 1995, provincial Departments of Welfare subsidized 4,733 centres catering for 230,000 children. In this way, provinces are attempting to spread limited resources to target crèches in rural areas. In the Eastern Cape, for example, funding has been extended to previously disadvantaged areas, and 37,045 children are benefiting from an investment of R2.4 million. But, in 1991, it was estimated that 71 per cent of the staff working in African educare institutions were untrained.

B. Separation of children from parents

306. The State can initiate action to separate a child from its parents where the parents are found by a children's court to be unfit or unable to have custody of the child. A children's court may also make placement decisions when a parent or guardian cannot be traced. A child may be legally separated from a parent by an adoption order, as a consequence of divorce, where a parent is imprisoned or where a child is arrested and detained.

307. Different State departments bear responsibility for the separation of children from their parents.

1. Legal and constitutional framework

308. Authority for the Child Care Act (1983) lies with the Departments of Welfare and Justice. The Act provides for the establishment of children's courts and the appointment of commissioners of child welfare. Every magistrate's court is a children's court in its area of jurisdiction, and every magistrate is a commissioner of child welfare. The commissioner and court are assisted by children's court assistants and social workers. No specific training on children's rights is provided to these personnel at present. In the urban areas, a dedicated children's court may employ full-time commissioners but, in rural areas, criminal court magistrates serve itinerantly as commissioners.

Removals by the children's court

309. Notice of a children's court inquiry must be given to parents or guardians if they can be traced. The Act provides for a variety of circumstances which guide the court in determining whether parents are unfit or unable to have custody of their child, such as whether they have assaulted or ill-treated the child or caused assault or ill-treatment, whether they have abandoned the child, whether they have no visible means of support, and so on.

310. These criteria will change with the promulgation of the Child Care Amendment Act (1996) which reverts to the child in need of care concept as the criterion when determining whether a child should be removed. This is in accordance with the child-centred focus of the Convention. The Amendment Act provides, for the first time, for legal representation at a children's court inquiry, if needs be at State expense. A child over the age of 10 years must be informed of the right to request legal representation.

311. A decision of the children's court is not subject to appeal, but may be taken on judicial review as a result of irregularities in the proceedings. A children's court may order the:

(a) Return of the child to the parent or, if the parents live apart, to the parent designated by the court, the guardian or the person with whom the child was living immediately before the inquiry, under the supervision of a social worker, on certain conditions;

(b) Placement of a child with a foster parent under the supervision of a social worker;

(c) Placement of a child in a children's home;

(d) Placement of a child in a school of industry.

Implementation of children's court orders

312. An order of the children's court generally lapses after two years. However, the Minister may extend an order for periods not exceeding two years at a time, but not to a date beyond which the child turns 18. There is no provision for hearing the child's views when administrative extensions are granted. Although the Act intends periodic reviews of placements by social

workers after the finalization of the children's court inquiry, this frequently does not occur in practice. 26/ Some children wait the entire two-year period after the order has been made for administrative designation to the place to which they have been referred. Thus, although the philosophy of the Act is that a child should be reunited with his or her parents within a period of two years or less, and that the period of the order should be used for reconstruction purposes, serious defects have been noted in practice. These will be addressed in part by the planned review of all child-care and protection legislation to be undertaken by the South African Law Commission. However, it must be borne in mind that social workers are extremely overburdened and carry high case loads, making effective reconstruction services difficult.

Institutions

313. The Act also regulates children in institutions (children's homes and industrial schools) and children in other places of temporary care, such as places of safety, shelters, places of care and foster homes. No legal measures address the issue of such children having contact with their families. Although it is welfare policy that the views of children be taken into consideration in all matters concerning children, there is no legal provision (other than the amendments cited above) to this effect.

Fostering and Adoption

314. In the case of foster care placements, the ideal is for the foster family, the child, the biological family and the social workers to form part of a team. In residential care facilities, children and their biological families should also have access to the social worker, the superintendent or to the multi-disciplinary team of the facility. Although these measures are organizational policy and prescribed by legislation, delivery often fails to live up to the standards required.

315. Adoption is also regulated by the Act, and parental consent is generally required. (Adoption is discussed further below.)

On the arrest of a child

316. The Criminal Procedure Act (1996) states that the police are obliged to notify parents or guardians of the arrest of a child under the age of 18 when they reside within the same magisterial district and can be traced without undue delay. A probation officer should also be notified of the arrest of any child under the age of 18 years. In practice, notification of parents of arrested children does not occur satisfactorily, and many children are therefore separated from families who do not know where they are. Studies have shown that few children receive visits from families whilst detained in prison awaiting trial. Similarly, in terms of the current law, families should be notified of the arrest of adults, including parents.

2. Context and implementation

Policy

317. Residential care policy has been revised by the IMC. A report by the committee proposing policy for a new child and youth care system was provisionally accepted by Cabinet in February 1997. The framework for the proposals includes such principles as family preservation (provision of services to children within a family context wherever possible) and permanency planning (all young people should be given the opportunity to grow up in their own families and, where this is proved not to be in their best interests or not possible, to have a time-limited plan which works towards lifelong relationships in a family or community setting). The policies proposed in the report are currently in the process of being implemented.

318. Foster care policy is currently being revised and brought in line with the Convention. This will influence provincial policy as well as new comprehensive child-care legislation.

319. The Department of Correctional Services has implemented a Mother and Child Unit for imprisoned women with babies or young children, and a new policy document is being drafted by the Department. Currently, children may remain with their mothers until the age of two or until they stop breastfeeding. After this, plans are made to create relationships with families in a community setting. Contact visits are being arranged to build sound relationships between young persons and their mothers.

C. Family reunification

1. Legal and constitutional framework

320. There are no further direct provisions in South African law dealing with family reunification.

321. In terms of the Child Care Act (1983), children removed from parental care may not be taken outside the borders of South Africa without the consent of the Minister for Welfare and Population Development. Applications for the removal of such children from South Africa to facilitate contact with their families of origin, or visits to family members abroad, must be carefully evaluated.

2. Context and implementation

322. South Africa respects the right of children to have meaningful contact with their biological parents. Where parents are resident outside South Africa, the channels of the International Social Services (ISS), an intercountry social work network, are used. This assists in alerting social workers in the country where the parents reside about the situation of the child in South Africa and the need for the child to have access to his or her parents. This measure contributes to the protection of children.

323. Where one parent denies the other rights of access, social workers in the respective countries liaise through ISS to remove obstacles in the way of regular contact, in order to normalize relationships between parents and children and facilitate unrestrained access.

324. South Africa respects the right of the child to enter or leave the country, provided that travel documents are issued by the Department of Home Affairs in accordance with the relevant legislation.

D. Illicit transfer and non-return of children abroad (art. 11)

Legal and constitutional framework

325. Parliament has approved that South Africa accede to the Hague Convention on the Civil Aspects of International Child Abduction, which became part of South African domestic law in 1996. The legislation designates the Chief Family Advocate as South Africa's central authority for the purposes of the Convention. The Minister of Justice is given powers to make regulations in terms of the Act.

326. There are as yet no provisions for intercountry adoption in South Africa. Yet, although the Act says that applicants for adoption must be South African residents and citizens, or must meet the requirements for a certificate of naturalization, there have been reports of intercountry adoptions. This question will be examined by the South African Law Commission as part of the review of child-care legislation.

327. At common law, there are offences such as kidnapping (which includes child stealing) and abduction that outlaw separation of children from their parents.

E. Recovery of maintenance for children

1. Legal and constitutional framework

328. At common law, parents are obliged to maintain their children to the best of their ability and within their capacities. A parent who fails to maintain a child adequately, while able to do so, risks a removal inquiry in terms of the Child Care Act (1983). A similar duty also arises in customary law. Provision is made in the Child Care Act (1983) for State contribution to the maintenance of any child who is in foster care, or who is a pupil or child in an institution. 27/

329. Contribution orders against a person legally liable to maintain a child can be made by a children's court, where the child has been placed in a place of safety, school of industry or children's home under the Child Care Act (1983), or in custody under the Criminal Procedure Act. This order has the same effect as a maintenance order.

330. In cases of separation or the divorce of parents, maintenance is payable in South Africa in terms of the applicable divorce decree. Other persons

acquire duties to maintain their children by virtue of birth or adoptive relationships. A father of a child born out of wedlock is legally obliged to maintain his child.

331. The Maintenance Act (1963) provides for procedures to ensure fulfilment of the duty to maintain another without undue costs. In terms of this Act, every magistrate's court is a maintenance court for its area of jurisdiction. The courts can make maintenance orders against a person legally responsible for children's maintenance after an inquiry. Failure to comply with a maintenance order is a criminal offence.

332. The Reciprocal Enforcement of Maintenance Orders Act (1963) regulates the reciprocal enforcement of maintenance orders made in South Africa and proclaimed countries. Similarly, the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act (1989) applies where maintenance orders regarding designated African countries are concerned. Where countries do not have a reciprocal agreement with South Africa, there will be enforcement problems.

2. Context and implementation

333. The recovery of maintenance is a serious problem in South Africa, and Government has given priority to the reform of the private maintenance system. The South African Law Commission has drafted an issue paper on the topic and the draft document on Gender Policy Considerations released for comment by the Department of Justice in 1997 advocates urgent practical steps to improve maintenance collection. The Lund Committee Report 28/ also reviews defects in the present maintenance system.

334. One of the problems identified is that courts routinely suspend sentences for failure to comply with maintenance orders, whether the sentence is a fine or a term of imprisonment. This has caused the criminal sanction to lose its deterrent effect. Warrants of execution to recover maintenance can only be authorized upon conviction of a defaulter. Garnishee orders, which can only be made when a person has been convicted of defaulting, can be evaded by changing jobs. Short-term improvements to the determination, collection and enforcement of maintenance orders are being investigated by a task team in the Department of Justice.

335. Problems in the maintenance system have led to increased reliance on State maintenance and child support grants.

F. Children deprived of family environment

1. Legal and constitutional framework

336. The Constitutional principles outlined under Section A of this chapter apply to children deprived of family environment.

337. Children who need special protection and assistance can be brought before a children's court, found to be in need of care, and placed in alternative care (such as foster care, children's homes and schools of

industry). In a crisis situation, a child may be removed without a court order and placed in a place of safety pending further investigation.

338. Children's court orders generally last for a two-year period. In terms of the Child Care Act (1983), a court order can be extended for another two years if it serves the best interests of the child. The position of children placed in residential care is evaluated on an ongoing basis by a multi-disciplinary team which must report to the Department of Welfare to determine whether the child can return to the parents. (See also paras. 307-319.)

339. The present Child Care Act (1983) requires that religious and cultural background be considered when placements of children are decided upon.

2. Context and implementation

340. Policy on foster and residential care has been developed by the IMC to reflect the general principles of the Convention. Serious defects have been identified in the child and youth care system, including inappropriate placements of children in residential care facilities, human rights abuses in children's institutions and lack of training for staff at these institutions. Legal and practical provisions for regular review of placements appear to be inadequate.

341. Several principles of the Convention are not enshrined in law in South Africa, including the use of institutionalization as a last resort. Continuity and permanency planning also present problems. Care givers often choose fostering over adoption because, while a foster grant is available to assist in the support and maintenance of the child, there is no adoption grant. This deters foster parents from applying for the adoption of children in their care. The aspect of continuity in the children's upbringing, be it in foster care or in an institution, will be attended to in the new comprehensive child-care legislation.

Institutions

342. A recent count revealed that there are 182 registered children's homes in South Africa with a total capacity of 13,565 beds, 32 places of safety with a total capacity of 3,019 beds and 73,354 children in 43,998 foster homes. The IMC investigations found that 1,815 children had been placed in State institutions out of their home province. This hampers reunification and reintegration with families and communities.

343. While the Child Care Act (1983) provides for inspections of places of safety and children's homes at the behest of the Minister of Welfare, these inspections are neither regular nor mandatory. Nor are inspectors obliged to take the views of children into account when conducting an inspection, although the inspector may observe and/or interview any child in the institution.

344. The IMC found that there were long delays in the placement system. Social workers reported delays of six months to two years.

Children in prison

345. Some 996 children are detained in prisons while awaiting trial, and approximately 1,000 are serving sentences of imprisonment. There have been reports of numbers of children held in police cells while awaiting trial. In the main, these children, whether detained in prisons or in police cells, do not receive family visits. The Department of Welfare is responsible for services to children awaiting trial, including family reunification and reconstruction, while the Department of Correctional Services is responsible for services to sentenced children.

346. The Department of Welfare has set up a Committee for the Management of Juveniles Awaiting Trial (COMJAT) to manage the provision of services to awaiting trial children.

347. However, the Department of Correctional Services is hampered in its efforts to set up and develop services to convicted and unconvicted children by budgetary constraints, severe overcrowding in prisons and human resources problems. The physical structure of prisons makes it difficult to accommodate children and render services effectively. However, progress has been made at some centres, where larger groups of sentenced children are accommodated in Youth Correctional Centres. Currently, eight such centres are operational and more such facilities are being planned.

G. Adoption

1. Legal and constitutional framework

348. The adoption of a child is effected by an adoption order made by the children's court after a children's court inquiry. Current legislation requires that a child's cultural and religious background be taken into account when an adoption order is made. The White Paper for Social Welfare also states that traditional systems of adoption should be acknowledged. There are, however, no legal barriers to trans-racial adoptions. A child may be adopted by a husband and wife jointly, by a widow, widower or unmarried or divorced person, or by a married person whose spouse is the parent of the child. Couples in same sex relationships may not jointly adopt a child.

349. The High Court has ruled that the natural father of a child born out of wedlock is a party to the proceedings in an adoption hearing, and therefore has the right to be heard. The Constitutional Court subsequently ruled that the provisions of the Child Care Act (1983) (which dispense with the consent of the natural father) are discriminatory, and that they should be redrafted by Parliament. The court suggested that legislation should take account of the duration of the relationship between the natural parents of the child born out of wedlock, the age of the child, the intensity or otherwise of the bonds between the father and the child, the stability of the relationship between the parents, the reasons why their relationship has not been formalized in marriage and the child's best interests. The resultant Powers of Natural Fathers of Extra-marital Children Bill (1997) provides that the father has the *right to be notified* of the impending adoption of his extra-marital child.

350. During the adoption process, the child is safeguarded by the requirement that an accredited social worker must place a report before the children's court. A child's consent to his or her adoption must be obtained when he or she has reached the age of 10 years. The Child Care Amendment Act (1996) also provides for legal representation for a child during any children's court inquiry, including an adoption hearing. The criteria to be applied by the children's court is whether the proposed adoption "will serve the interests and conduce to the welfare of the child". Consent is required from the biological parents or (until the Act is amended) the mother of a child born out of wedlock.

351. Legislation provides for circumstances under which parental consent can be dispensed with if it is being unreasonably withheld. The Child Care Amendment Act (1996) provides for a 60-day period during which parents may withdraw their consent without giving reasons.

352. There are provisions for the registration of adoptions, and for issuing a new birth certificate in the adoptive parents' name. All legal rights and obligations between the adopted child and his natural parents are terminated, and the child is deemed to be the legitimate child of the adoptive parent or parents. Applications for recision of adoption orders may be brought, but seemingly not by the child himself. He would, however, be entitled to be legally represented at the recision hearing in terms of the new amendments.

353. The law provides that no consideration, in cash or kind, may be given or received in respect of the adoption of a child. To do so constitutes a criminal offence.

354. Legislation is in place to ensure that information about the biological parents is made available to the adopted person in an appropriate and responsible manner, and with adequate guidance and counselling to all parties concerned in the adoption triangle.

2. Context and implementation

355. Intercountry adoptions of South African children have been identified as one of the critical areas for amendment in the current Child Care Act (1983) and should not be delayed until the comprehensive new child-care legislation is drafted. The amending process includes the eventual ratification of The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

H. Periodic review of placements

1. Legal and constitutional framework

356. The State is responsible for periodic reviews of statutory placements. Such reviews are undertaken by a social worker every two years and must cover the general and social circumstances of the child and his/her parent(s) and the possibility or not of restoring him/her to their care.

2. Context and implementation

357. The fact that a children's court does not have the power to review its own orders is problematic. In addition, an order changing an institutional placement may be made administratively, without referring it back to court. There is also no procedure at present to allow for the child's views to be taken into account when administrative changes to placements are made.

358. New child-care and protection legislation which is being considered will address the accountability of staff who work at institutions and social workers dealing with children.

359. The inspection of institutions under the Child Care Act (1983) has been dealt with above.

I. Abuse and neglect including physical and psychological recovery and social reintegration (arts. 19 and 39)

1. Legal and constitutional framework

360. The Constitution provides for the child's right to protection from maltreatment, neglect, abuse or degradation. It also enshrines the right to freedom from all forms of violence from either public or private sources, not to be tortured in any way, nor to be treated or punished in a cruel, inhuman or degrading way. It also provides that "everyone has inherent dignity and the right to have their dignity respected and protected".

361. There is mounting public concern over the extent and severity of violence against children, and of their abuse and neglect in South Africa. The number of reported cases is increasing rapidly. Apart from abuse at home, at school and in the neighbourhood, child abandonment, child labour and the commercial sexual exploitation of children are widespread problems.

362. At common law, there are a variety of criminal offences for which perpetrators of violence or abuse against children can be prosecuted, including murder, culpable homicide, rape, assault, indecent assault, assault with intent to do grievous bodily harm, etc.

363. The Child Care Act (1983) provides that a children's court inquiry can investigate the possible removal of a child where ill-treatment or neglect is indicated. The Act also makes it a criminal offence for any parent, guardian or person having custody of a child to ill-treat her/him or allow her/him to be ill-treated or abandoned. Any person legally liable to maintain a child and who, though able to do so, fails to provide the child with adequate clothing, lodging and medical care is guilty of an offence.

364. The Act also states that every dentist, medical practitioner, nurse, social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who examines, attends or deals with any child in circumstances giving rise to the suspicion that the child has been ill-treated, or suffers from an injury, single or multiple, the cause of which

appears to have been deliberate, or suffers from a nutritional deficiency disease, must immediately notify the Welfare Department or face criminal sanction.

365. The Prevention of Family Violence Act (1993) also provides for the reporting of suspected child abuse. Any person who examines, treats, attends to, advises, instructs, or cares for any child must report any circumstance which may indicate ill-treatment to a police official, social worker or a commissioner of child welfare. Failure to do so is a punishable offence. The Prevention of Family Violence Act (1993) also provides for the granting of interdicts with regard to family violence. Its provisions include protection for children.

366. The Prevention of Family Violence Act (1993) has been found to contain defects in content as well as in regard to the processes set up for administration of the interdicts. Amendments are therefore being investigated by the South African Law Commission.

367. Bail granted too easily to perpetrators of crimes involving violence against children has been a source of mounting public concern. Further amendments to the laws of bail are therefore under way, in addition to the recent amendment (in respect of bail) in the Criminal Procedure Second Amendment Act (1995). The aim of the new amendments (Criminal Procedure Second Amendment Bill (1997)) is to improve the bail system by providing for hearings of serious offences in regional courts (at a higher level than magistrates courts); by prohibiting after-hours bail applications; and by providing for circumstances where the accused must prove exceptional circumstances before being granted bail.

368. The Constitutional Court ruled that corporal punishment of children as a sentence imposed by courts was a violation of the right to freedom from "cruel, inhuman and degrading treatment or punishment". The Abolition of Corporal Punishment Act (1997) outlaws such sentences. Corporal punishment of children has also been prohibited in the South African Schools Act (1996) and is now a criminal offence. Parents retain common law powers of moderate chastisement, as part of the parental power. Corporal punishment in institutions falling under the Child Care Act (1983) is still permissible in terms of its regulations. Legally, corporal punishment may no longer be imposed upon persons in prison for infractions of prison disciplinary rules.

2. Context and implementation

369. South African Police Services Child Protection Units and specialized individual officers dealt with 28,482 cases of crime against children in 1995. Reported crimes against children have increased by 117 per cent between 1993 and 1996. 29/ Many, if not most, reported cases are dealt with by structures other than the police, chiefly the social services. There are many reports of child abuse and neglect, caused by poverty, alcohol and violence. However, only 0.1 per cent of the entire police budget is allocated to Child Protection Units.

370. The Department of Welfare has established a Working Group on the Prevention of Child Abuse and Protection against Neglect whose task it will be to analyse current problems and outline a national child protection strategy. Based on its recommendations, the Department is currently developing policy and a plan of action to address the problem of child abuse. Guidelines on how to deal with victims and offenders are being formulated. There are also efforts to promote awareness of child abuse issues amongst communities.

In schools

371. There have been widespread reports that corporal punishment continues to be imposed in schools, despite the provisions of the South African Schools Act (1996). Training of teachers and other staff in alternative disciplinary measures is one of the challenges facing South Africa.

In prisons

372. Children awaiting trial or serving sentences in prison are vulnerable to physical and sexual abuse by other detained persons. On 8 May 1997, a detained child, held illegally with an adult in police cells, was killed by the adult. There have been numerous reports of violence against children in police cells and in prison.

373. Complaints reporting systems are not well developed. A child in police cells may complain to the officer in charge, as could a child detained in a prison. However, there have been occasions where the complainant is placed back in confinement with the perpetrator of the violence. Often, the victim will not reveal the identity of the perpetrator for fear of repercussions, and few successful prosecutions take place.

In the work place

374. The Child Care Act (1983) makes it an offence to provide work to a child under the age of 15 years. Under the present Act, ministerial exemptions are possible. Many children in South Africa work under exploitative conditions. (See chap. VIII.)

375. Sexual abuse of children is also dealt with in chapter VIII.

J. Conclusion

376. About 37 per cent (some R325.1 million) of the welfare services component of the budget was spent on child and family services over the past budget year, with an emphasis on previously disadvantaged children.

377. Although much is done to create a healthy family environment and to protect children, many children still have to be placed in alternative care in South Africa. There is a need for developmental social services to strengthen the family and enable children to remain in their family of origin. This will be particularly important as South Africa is faced with increasing numbers of children at risk.

378. Pilot projects will have to be replicated, extended and widely applied throughout the country.

379. The large number of statutory provisions and the customary law relating to children need to be harmonized and brought in line with the Convention and the African Charter on the Rights and the Welfare of the Child. This process has begun, but a major challenge will lie with the implementation of this legislation for the benefit of all children and families in South Africa.

380. Perhaps the greatest challenge in the welfare field will be the development of community based models and programmes which are appropriate, affordable and sustainable, while at the same time strengthening family life in all its forms and protecting the rights of children.

VII. EDUCATION, SPORT, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational training and guidance (art. 28)

1. Introduction

381. In reporting on education, the legacy of the apartheid era, and in particular the devastating effects of the Bantu Education Act, cannot be underestimated. The White Paper on Education (March 1995) states that: "millions of South African children and youth are learning in school conditions which resemble those in the most impoverished States". It states further that "access to technological and professional careers requiring a strong basis in mathematics and science is denied to all but a fraction of the age cohort, largely because of the chronic inadequacy of teaching in those subjects". At the same time, South Africa provides education for the privileged minority at full first world standards.

382. In addition to the institutionalized racism and disadvantage experienced by the majority of South Africa's children, many schoolchildren paid a high price through their involvement in the liberation struggle. From 1976, when the children of Soweto spearheaded the resistance to the imposition of Afrikanns-language instruction in schools, large numbers of children abandoned school to join the armed struggle or to work internally for change.

383. Further, because many of the people responsible for child care are poorly educated themselves, it is difficult for them to assist with schoolwork or to provide language and quantitative skills which children from more privileged backgrounds acquire as a matter of course. 30/ Additionally, when parents are illiterate, it is difficult for people rendering other services to children to communicate with them except by word of mouth. It also needs to be noted that grandparents play an important role in raising children in South Africa and frequently have little formal education themselves.

384. Thus one of the main challenges facing South Africa in the post-apartheid era is to ensure equity and redress in the educational system.

385. Contrary to the popular myth that the drop-out rate is a major factor affecting educational standards, virtually all children between the ages of 6 and 15 today attend school, and the participation of young people aged 15-19 is approximately 83 per cent. 31/ This implies that, rather than focusing on measures to keep children in school, the priority should be to ensure that children benefit from being there. 32/

Attendance

386. Although there are few disparities in attendance in the pre-15-year-old group, differences emerge between the ages of 15 and 19. Girl children drop out of school earlier than boy children and children in rural areas tend to drop out earlier than those in urban areas. However, the proportion of young African persons of both sexes between the ages of 20 and 24, including those living in rural areas, attending educational institutions is significantly higher than for any other group. This may be attributed to two factors. First, a generation of young African men and women, realizing that education is a pre-requisite to well-paid employment, is trying to make up for the education they missed during the freedom struggle. Second, because of poverty, poor quality schools and the necessity of learning in a second language, young African people progress more slowly through the educational system. 33/

Household income

387. Despite the high rate of African participation in education, there is nevertheless a strong association between household income and school enrolment, particularly in the higher grades. Hence, although this association is weak at primary level where 90 per cent of children from rich households attend school as opposed to 85 per cent in the poorest households, at secondary level the gap widens to 90 per cent against 46 per cent, and at tertiary level, to 38 per cent against 4 per cent.

388. There is also a very strong association between the payment of tuition fees and income. At both primary and secondary schools, the average fees paid by the parents of White pupils is in the order of R1,000 per annum, whilst the average for other population groups is around R40 per annum. Clearly this enables schools in traditionally "white" areas to provide superior resources and, if quality of education were to correspond to the ability of parents to pay, there would be serious implications for the achievement of equity. However, the Department of Education has recently published a proposal for a school funding model that seeks equity and redress for the inequalities of the past. Policies are guided by teacher ratios and the principle of equity.

2. Legal and constitutional context

389. The Government 34/ is committed to bringing legislation on education, leisure, culture, sport and recreation in line with the Convention and the Constitution, which sets out the fundamental right to education.

390. According to the Constitution, education must be provided by the nine provincial departments of education. The Minister of Education determines

the minimum norms and standards for education in terms of the National Education Policy Act (1996) in consultation with the provinces. 35/

391. The Constitution states that no person (and hence no learner) shall be unfairly discriminated against, directly or indirectly, on any grounds, including race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, conscience, belief, culture or language.

392. It also provides for instruction in the language of choice where this is reasonably practicable. On the basis of this provision, the White Paper on Language in Education was published in July 1997.

393. The Constitution also allows for independent educational institutions, provided they conform to minimum standards laid down by the State.

South African Schools Act (1996) [Schools Act]

394. The South African Schools Act (1996), together with the provincial education laws, provides the legal framework for the provision of education to all learners and the protection of their rights in public and independent schools. A wide cross-section of school-parent communities was consulted during the drafting of the South African Schools Act (1996).

395. The Schools Act provides for compulsory basic education for all learners from the age of 7 (or grade 1) to the age of 15 (or grade 9) based on the principle of non-discrimination. This means that provinces must provide sufficient school places for all learners. As a result, provinces have embarked on a school building programme to provide accommodation for the 11,908,879 learners in grades 1 to 12 in 1997.

396. Although admissions policies are decided by school governing bodies, the Schools Act bans unfair admission policies and discriminatory educational practices in public schools.

397. Learners with disabilities experience discrimination in all spheres of their lives. Under the new Schools Act, mainstream schools must, where reasonably practical, admit such learners. Schools are encouraged to take steps to make their facilities accessible to learners with disabilities.

398. Learners who cannot be properly taught at mainstream schools will be educated at separate special schools, after taking the wishes of parents into account. It must be noted, however, that many learners with disabilities do not currently have access to education. Redress for learners who have previously been disadvantaged is required and an integrated approach in this regard is the subject of the National Commission on Special Needs in Education and Training. 36/

399. Other major achievements which were accomplished through the Schools Act include:

(a) Norms and standards for language policy in public schools;

(b) Provision for the freedom of religion on the basis of equity and freedom of conscience;

(c) The right of governing bodies to adopt a disciplinary code of conduct for a public school after consultation with the learners, parents and educators of the school and taking into consideration guidelines provided by the Minister of Education to ensure positive discipline and respect for human dignity;

(d) The prohibition of corporal punishment in schools;

(e) The right to representation for learners from the eighth grade onwards on the governing bodies of schools and their participation in matters which affect them. In addition, learners have the right to representation on Learner Representative Councils. National learner associations have also been established.

(f) Provision for the determination of fees by majority resolution of the parent body. However, no learner may be excluded from a school because of the non-payment of his or her school fees and parents have rights of appeal. Implementation of a funding policy for public schools will begin in 1998.

(g) Provision for home schooling.

3. Context and implementation

400. There are in South Africa 12 million students, 29,000 schools and 364,000 teachers, as well as parents and feeder communities. This makes education an extremely powerful instrument for the promotion of a human rights culture and the protection of the rights of the child.

401. In the national budget 19.7 per cent is allocated to the full spectrum of education. This amounts to R36.7 billion, excluding donor funding. During 1995/96 State expenditure on education for children under the age of 18 was as follows, according to the Internal Report of the Department of Education of June 1997: pre-primary education, R213,111,000; primary education, R14,291,610,000; secondary education, R10,313,405,000.

Construction and upgrading of schools

402. A National School Construction and Upgrading Programme was established in 1995 and caters for the physical improvement of school buildings. An allocation of R1 billion for new school buildings was made available for 1996/97. Many schools, especially in the rural areas, have no water or sanitation facilities at all. Educational programmes on hygiene and the use of facilities are also provided.

403. The School Register of Needs Survey was initiated as one of the foundations of the Government's commitment to equity in education and improving the quality of learning and teaching. It provides a comprehensive database of schools and educational institutions and will be a useful instrument for planning the optimal use of facilities, the

allocation of resources and addressing the historical backlog in physical facilities. It will also serve as a basis for the measurement of progress in the advancement of children's rights.

Language policy

404. The White Paper on Education Policy was published in July 1997. It consists of a general policy for education (in terms of the National Education Policy Act (1996)) and norms and standards regarding language policy (in terms of the South African Schools Act (1996)). The language in education policy is a national language plan which recognizes the value of the cultural diversity of the population and aims to promote multi-lingualism and the development of the official languages, including sign language.

405. As multi-lingualism is the norm on the African continent, the underlying principle is to maintain the home language while providing access to additional languages. The right to choose the language of teaching and learning is vested in the individual.

Commission for further education

406. The Commission for Further Education is investigating the provision of education, including vocational education, for learners over the age of 15 years. Qualification recognition will conform to new criteria established by the South African Qualifications Authority within the new National Qualifications Framework which will set new standards for South Africa.

Curriculum 2005

407. Curriculum 2005 will be phased in between 1998 and 2005. It makes provision for eight learning areas. Two of these learning areas, Human and Social Sciences and Life Orientation specifically provide for human rights education and the protection of the environment. Life Skills Education is aimed at promoting self-esteem, assertiveness, decision-making, problem solving, conflict resolution and negotiation skills in children. These are intended to empower children to deal with, inter alia, issues of sexuality, substance abuse, stress management, discrimination and health and safe living. Curriculum 2005 follows an outcomes-based approach which implies, amongst other things, that learners should also give evidence of what they are able to do, and not only of what they know, and to make use of their rights to freedom of expression and thought.

408. The South African Law Commission, in collaboration with the Department of Education, has developed a policy for handling learners with HIV/AIDS.

409. A Task Team on Gender Equity, appointed in March 1997, contributed to the development of Curriculum 2005 to ensure that gender sensitivity is reflected in learning outcomes. All curriculum development work will be sensitive to gender, race and disability. There will also be equity and representivity in the employment and training of educators. 37/

410. Besides its academic focus, Curriculum 2005 also focuses on developing skills, values and attitudes in learners.

Mathematics, science and technology

411. The Technology 2005 Project aims to improve the learning outcomes in the fields of natural sciences, mathematics, technology, engineering and economic development and to ensure that it becomes part of the education of every learner in South Africa by the year 2005.

412. SYSTEM (Students and Youth in Science, Technology and Mathematics) is an initiative designed to break the ongoing cycle of mediocrity in science and mathematics teaching.

Primary school nutrition

413. An integrated National Primary School Nutrition Programme was implemented in most provinces in 1994 within the first 100 days following the inception of the new democratic government. The programme targets schoolchildren in economically disadvantaged communities. (See also chap. V.)

Early childhood development

414. The long history of discriminatory provision for early childhood development (ECD) makes a quick remedy extremely difficult. 38/ The national Department of Education has given support to a project-based early childhood development programme entitled the National ECD Pilot Project. The aim of this project is to implement a reception year throughout South Africa and to build the capacity of provincial departments of education and non-governmental organizations to implement ECD from birth to at least nine years. 39/ The Departments of Health, Welfare and Education will take co-responsibility for early childhood development. Provision is also made for early childhood development as a Presidential Lead Project.

Higher education

415. A White Paper on Higher Education and a Higher Education Bill (1997) have been approved by Cabinet. Although the principle of accessibility is acknowledged, higher education is not free. A national programme to assist students was introduced in 1996. The higher education institutions may levy fees but may not discriminate in any way in admitting students to such institutions.

416. An Institute for Education Technology is being set up as part of a National Institute for Lifelong Learning.

Illiteracy

417. The issue of widespread illiteracy is not addressed in legislation. It is, however, the focus of a number of NGO projects. The Directorate of Adult Basic Education, Department of Education, caters, inter alia, for out of school youth.

Other programmes

418. The Culture of Learning, Teaching and Service Campaign (COLTS) was launched early in 1997 to restore a culture of learning and teaching in all schools and to counteract the drop out of learners from schools. The campaign will be sustained for a period of three years until 1999.

419. In terms of the general well-being of children, national and provincial intersectoral initiatives have been established. These include, inter alia, the National Crime Prevention Strategy Victim Empowerment Programme, the Drug Advisory Board, Women and Sport South Africa and the Health, Education Awareness Task Team. The South African Law Commission, in collaboration with the Department of Education, has developed a policy for the admission to schools of children with HIV/AIDS.

4. The way forward

Rights education

420. There is a need for adult education in the areas of human rights and obligations, positive discipline, learner participation, etc. Both parents and educators should receive guidance on how to protect children and learners from physical or mental violence, injury or abuse, neglect or negligent treatment and exploitation.

421. Children should be informed about their rights and responsibilities.

The whole child

422. More attention needs to be given to the full development of the child's personality, talents and mental and physical abilities.

Children with disabilities

423. The provision of education for disabled children must be further developed pending the recommendations of the National Commission on Special Needs in Education and Training and the National Committee on Education Support Services, and in compliance with the policy on disability currently in its final stages of preparation.

Access

424. Scholar transport needs to be made available on a broader scale and on a more affordable basis.

425. Schools in rural and informal settlements need to be better financed and developed.

426. More learners' books, computer and science facilities need to be made available.

Early childhood development

427. Better provision for early childhood development programmes needs to be made at local government level.

Educator training

428. Educators need to be trained to implement Curriculum 2005.

Electrification

429. Ongoing electrification programmes are urgently required, in order to provide a better environment for study in schools and homes, as well as to give children access to electronic media.

Mass media

430. Although the mass media infrastructure is well-developed, there is little evidence that special attention has been given to the requirements of children.

B. Sport, Leisure, Cultural and Recreational Activities (art. 31)

1. Constitutional and legal framework

431. A Drug Free Sport Bill and a Sport and Recreation Bill have been tabled in Parliament.

2. Context and implementation

Arts and culture

432. South Africa's first Department of Arts, Culture, Science and Technology (DACST) was set up by the new democratic government in 1994, indicating a recognition of the role of arts and culture in the improvement of quality of life of a people, and especially of its children. A key objective of the Department is to ensure that arts and culture play a vital role in all aspects of child and youth development.

433. DACST works with the Department of education to ensure that arts education is built into the formal school curriculum for all learners. Formerly, arts education was only incorporated in the curricula of a few, mainly white and private, schools.

434. DACST is developing a growth strategy for cultural industries to maximize the role of arts and culture in economic and social development. This will include the contributions of children. Business and various NGOs are also involved in the promotion of arts and culture.

435. Apart from incorporating arts education into the formal school system, DACST is also developing and extending community-based arts education

structures. The building of 43 Community Arts Centres is in progress. These centres will have a strong child and youth focus, serving the needs of both in school and out of school children.

436. At a provincial level, departments responsible for education also take responsibility for arts and culture.

437. The National and Provincial Arts Councils were established in 1997 to develop all aspects of arts and culture which will also make provision for children. Community Arts Centres are being built and developed in the provinces. The Southern Africa Development Community (SADC) is also contributing towards a strategy for funding arts and culture.

Broadcasting and children

438. A National Children's Broadcasting Summit convened in 1996 resulted in the establishment of the Children's Broadcasting Forum.

439. The Independent Broadcasting Association (IBA) is responsible for quotas for children's programmes on radio and television. The National Film and Video Foundation supplies some schools with audio-visual material to supplement teaching in schools.

Sport

440. The Ministers of Education in the provinces are also responsible for the promotion of school sport on a provincial basis. Schoolchildren take part in a wide range of sport in extra-curricular activities and also in physical education. The United Schools Sports Association of South Africa (USSASA) promotes the participation of children in sport at national and international levels. The development of policy on women and sport is underway and will also make provision for girls.

South African National Games and Leisure Activities

441. The South African National Games and Leisure Activities (SANGALA) is a child and youth-focused recreation project. The following projects focus on children:

442. Community SANGALA is a low level competitive physical recreation project which began in 1995 and culminated in a National Festival in 1996. In future, this project will be decentralized to provide opportunities for young and old to participate in continuous, sustainable programmes in their communities. The project will take place in all nine provinces and will culminate in Community Festivals throughout the country during 1997. It is estimated that 80 per cent of participants will be children and youth. It aims to reach 5,500,000 participants throughout the country during 1997.

443. Training SANGALA is a capacity building project for recreation leaders. More than 1,623 Community Recreation Leaders have completed the first level of training. As part of their training and prior to certification they are required to render 10 hours of practical community service. 40/

444. Street SANGALA is a recreation and life skills project for street children. A total of 1,600 street children in various cities have attended the activities presented. The project is aimed at getting marginalized youth off the street and back into normal community life.

445. Rural SANGALA is a recreation impact assessment project in rural and informal settlements. Children do not play a direct role in the delivery of this project. The outcome of the research will, however, focus strongly on the needs of the children from these communities.

446. The Recrehab project focuses on the rehabilitation of youth in prisons, to be presented as part of the SANGALA programme. 41/ It is envisaged that the project will be extended to at least one prison in each province by the end of 1997. This project impacts directly on the rehabilitation programme for youth offenders.

447. SANGALA Movers is an active participation programme aimed at enhancing the motor skills development of pre-primary children between three and six years of age. The aim is to bring recreation to formal and non-formal groups of children in the care of supervisors and pre-schools teachers in communities.

Other sports programmes

448. National Sport and Recreation (Wellness) Day, to coincide with the World Walking Day and the Africa Sport and Recreation Day, is an awareness campaign to promote the benefits of participation in recreation activities. This day will consist of a variety of recreation activities and sports events to take place across the country. Most of the participants will be children as the communities, sports federations and schools will be actively involved.

449. Sport and Recreation Against Crime (SAC) is an awareness campaign involving prominent sporting personalities.

450. A pilot talent identification programme, targeted at 12 and 13 year olds, has been implemented. The Protea Sports Programme represents a multidimensional approach aimed at addressing the sports delivery system.

451. The National Sport and Recreation Volunteers Programme will establish a database of volunteers to enhance sport and recreation activities. It will also provide a training programme for volunteers and a reward system to promote active voluntarism in South Africa. In future sports facilities will be shared by schools and communities.

3. The way forward

Arts and culture

452. There is a need for more and better spent funding, trained facilitators and material resources for arts and culture, as well as for trained personnel to act as facilitators and specialists in leisure, recreational and cultural activities.

453. There is a need for creative events and festivities directed at children both in school and informal settings.

454. Local governments need to make better provision for the promotion of arts and culture for children.

455. Community art centres need to make proper provision for children.

456. There is a need for better use of the public broadcaster and locally produced children's programmes. Children are marginalized in the print and electronic media, and sexism prevails. There is a need for South African content in public broadcasting. The cultural heritage of many children is not validated, e.g. orality, traditional theatre, story telling, traditional customs and myths.

457. There is a need to improve the media communication strategy by which rural, urban disadvantaged, informal and non-formal areas are informed.

Sport

458. Local governments need to make better provision for the development of facilities for leisure and sport.

VIII. SPECIAL PROTECTION MEASURES

A. Background

459. South African legislation relating to children is fragmented, with responsibility spread across several government departments. No composite piece of legislation exists. In addition to this, portions of existing legislation are incompatible with the principles of the Constitution and the Convention on the Rights of the Child. New policy had to be developed in almost all departments and spheres of government to meet the requirements of the Convention. In the process, children's rights lobbyists have developed a closer relationship with government, something that would have been unthinkable during the apartheid years.

460. Much new policy relating to children has emerged since the 1994 democratic elections and the ratification of the Convention in 1995. The most significant is the IMC's Interim Policy which describes the transformation of the child and youth care system; the Protocol on the Sexual Abuse and Neglect of Children; the National Commission's Report on Special Needs and Education Training, and the Lund Committee Recommendations for Child Support Benefits. The challenge will be to translate these policies into practice.

461. The South African Law Commission is currently reviewing sexual offences against children, juvenile justice and child care legislation. Committees working in these areas collaborate in a variety of ways, in line with the movement towards the development of a composite body of legislation for children.

B. Children in states of emergency: refugee children (art. 22)

1. Legal and constitutional framework

462. In 1996, South Africa acceded to the Convention relating to the Status of Refugees (1951 and 1967), and in 1997 to the Protocol relating to the Status of Refugees (1967) and the Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa (1969). 42/

463. The same definition applies to all refugees, regardless of their age. The status of minors accompanied by their parents is determined by the status of their parents. Unaccompanied minors are assessed on age and maturity. The authorities have an obligation to ensure that the best interests of the child are safeguarded. There are, currently, 1,951 asylum seeking/refugee children in South Africa.

464. Asylum seeking children are governed by the Alien Control Act (1991) and the Alien Control Amendment Act (1995). Amendments to the Aliens Act are proposed to prevent the dilution of refugee children's rights. Refugee children and children of illegal immigrants are subject to the following regulations:

(a) Children of immigrants who have been resident in South Africa for more than 20 years, own property or have married locals are for all intents and purposes registered as citizens.

(b) Children of people classified as illegal immigrants are not regarded as citizens.

(c) Unaccompanied asylum seekers are repatriated.

(d) Children born of temporary contract workers cannot acquire South African nationality.

465. If a child or family does not qualify for refugee status, they are repatriated, although they have the right to appeal. Efforts are made to reunite children with their families. If they do not leave, they are detained at a centre to await deportation. If the detention exceeds 30 days, an inquiry is required.

466. Children of refugees can acquire refugee status if it is granted to their parents. May 1997 figures indicate that 3,431 people have formally been granted refugee status in South Africa, of whom 6 per cent are children. The figures on the granting of refugee status demonstrate a high percentage of rejected or outstanding applications. Whatever the status of the father, the child of a South African mother is a South African citizen by birth.

467. Refugee children who live or work on the streets are entitled to protection through a children's court inquiry.

2. Context and implementation

468. A Technical Task Team was set up by the Government to look at international migration. The findings suggested that it was unfair to expect the receiving State to carry the burden of refugee protection, and that this responsibility should be shared among States, based on what they can realistically contribute. It was also suggested that an independent authority be established to make rapid assessments of a claimant's right to refugee status. Child's rights activists have suggested that a specific unit or person be appointed to handle all cases of refugee children within specific time frames and guidelines.

469. The UNHCR plays a significant role in ensuring that refugee children are accorded the rights enjoyed by South African children. A Refugees Appeals Board has been established to hear appeals. The UNHCR also proposes training judicial officers and immigration officials on the handling of refugee children.

470. The International Committee of the Red Cross is represented at interviews of all unaccompanied minor applicants for refugee or asylum seeking status and takes responsibility for the cross-border tracing of parents and relatives. In the interim, children are placed in the custody of suitable families of similar background. The South African Red Cross Society places children in both public and private schools and tries to ensure their well-being. Currently no monitoring or evaluation procedures specific to refugee children are in operation. The office of the UNHCR keeps a watching brief on the situation. The detention of refugee children in police cells and prisons is under investigation.

471. Various programmes for refugees exist, and refugee forums have been established in three of the large urban centres. Under the auspices of the UNHCR, NGOs in these centres coordinate endeavours to assist with the placement of refugees in shelters and giving support of a general nature. The South African Council of Churches provides food and blankets to those with asylum seeking status who are not in shelters. Support programmes for refugees are provided.

472. Currently no monitoring or evaluation procedures specific to refugee children are in operation. The office of the UNHCR keeps a watching brief on the situation. The detention of refugee children in police cells and prisons is under investigation.

473. In 1996, the Government granted amnesty to nationals of the SADC region in certain circumstances.

3. The way forward

474. Issues relating to the status of displaced children and their vulnerability need to be explored.

475. A distinction needs to be made between illegal immigrants and refugee

476. Particular attention needs to be given to unaccompanied refugee children and displace children.

C. Children in states of emergency: children in armed conflict (art. 38), including physical and psychological recovery and social reintegration (art. 39)

1. Introduction

477. Apartheid has left South Africa with a culture of violence, particularly at local community level. Generations of children have been caught in the crossfire from an early age. Many children have seen death by violence at first hand and developed the impression that violence is the only acceptable means to resolving conflict.

478. Since 1994, political violence has decreased significantly in South Africa, although political violence on a more contained scale continues in KwaZulu Natal. Political violence has, however, been replaced by an upsurge of crime in which many young persons have become involved. The National Crime Prevention Strategy has been developed to deal with this crime wave which must be ascribed to a period of transition and dire socio-economic conditions and unemployment. In addition, sectors that wielded great power in communities during the apartheid years, such as gangs, have created pockets of violence in the areas in which they operate. Many of the victims of the "gang war" are children. The Government has expressed its concern that the so-called "third force", which caused great suffering in the pre-election period, is implicated in this violence and crime.

479. Since 1994, conscription of white males at the age of 16 has been abolished in favour of an all-volunteer force with a minimum age of 17 years - an age grouping that is not consistent with the requirements of the Constitution.

480. During the liberation struggle, large numbers of young people formed armed "Self-Defence Units". This was generally supported by their families. In addition, many children crossed the border to join Umkhonto we Sizwe (MK), the armed wing of the ANC. The involvement of children in political violence began in earnest during the Soweto uprising in 1976 and continued over subsequent years. Despite efforts by MK to provide some education for children, they paid a heavy price for their involvement, and many returned with no qualifications or education.

481. During the state of emergency in the mid-1980s, children as young as seven years were arrested, detained without trial, held in solitary confinement and tortured. Such trials as took place were held in courts which frequently failed to challenge either the legislation or the human rights implications of their treatment.

482. Over the years, chiefly from 1974 to 1994, South Africa experienced political violence on a wide scale. Inevitably children found themselves in the crossfire of violence. Many were killed and maimed. Others suffered psychological damage.

483. However, those who record the participation of the young in South Africa's past must acknowledge that although many children suffered appalling abuse, children and young people were not simply victims. Many children were committed actors in the political battle. Others became the instruments of the violent agendas of adults.

2. Legal and constitutional framework

484. The issue of child soldiers is of particular importance for Africa. The Organization of African Unity (OAU) adopted the African Charter on the Rights and Welfare of the Child (1990). Recruiting children for war is prohibited by the Convention and is certainly not in the best interests of the child (art. 6).

485. The Machel Study - the United Nations Report on the Impact of Armed Conflict - states that 18 years should be the minimum age for recruitment and participation in hostilities. It is anticipated that South Africa will support this initiative. A number of NGOs support the optional protocol of the United Nations Convention (art. 38).

486. The Constitution defines a child as a person under the age of 18 years and states that "Every child has the right not to be used directly in armed conflict, and to be protected in times of armed conflict." During a state of emergency, children of 15 years and under may not be used directly in armed conflicts.

487. In addition to the ratification of the Convention, the Convention on the Elimination of All Forms of Discrimination against Women (including girls) (1996) and the pending ratification on the African Charter on the Rights and the Welfare of the Child, South Africa is a party to the Geneva Conventions (1949), including Protocol I, but not Protocol II.

3. Context and implementation

488. The country's position paper on children in armed conflict was presented by the Minister of Welfare in Addis Ababa in 1997. It states that: "the South African Government is deeply interested in making a meaningful contribution to peace and well-being in Africa and to that end believes that safeguarding the healthy development of our young people is of critical concern".

489. In 1997, the Government imposed a unilateral ban on the use, production and trade of anti-personnel landmines.

490. A number of structures have been established to protect and promote the human rights of all South Africans, including children in armed conflict. They are: the Truth and Reconciliation Commission's special hearings on children, the Human Rights Commission and a variety of NGOs.

4. Physical and psychological recovery and social integration

491. The Truth and Reconciliation Commission (TRC) represents the most significant attempt to bring about healing of the South African nation. The

TRC gives South Africans the opportunity to tell their stories and provides, mainly symbolic, reparation to those who have suffered. Special hearings have been held for children who have suffered in the struggle and for those who, on both sides, were involved in armed conflict.

492. The TRC has held five special children's hearings. Children were invited to tell their stories about their direct involvement in the liberation struggle, and about things that had happened to their families. Following on these hearings, there was agreement that the National Programme of Action provides an appropriate vehicle for the institutional reparations identified as part of the process of reconciliation and nation building.

493. The TRC has been well supported by a number of NGOs who have provided psychological services for victims who testified before the Commission. The Religious Response to the Truth Commission has played an important role in reaching out to those who are unable to participate in the hearings.

494. In addition, the National Coordinating Committee on Repatriation played an important role before the 1994 elections when many members of MK and others who had been in exile returned to South Africa. These returned exiles were also given psychological support and practical assistance by NGOs.

5. The way forward

495. There is an anti-gun lobby in South Africa, pressing for, amongst other things, a review of the age requirement for a gun licence (currently 16 years). This is one of the issues being addressed by the National Crime Prevention Strategy.

496. The African Charter on the Rights and the Welfare of the Child has been signed by South Africa.

D. Children involved with the system of administration of juvenile justice, the administration of juvenile justice (art. 40)

1. Legal and constitutional framework

497. The Constitution protects all the due process and fair trial rights commonly protected in rights based democracies. Unlike many other democracies, however, these rights are spelt out in detail in the Constitution. The Constitution (and the common law) provides that every accused person has the right to a fair trial, including the right "not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted". It also provides that every accused person has the right to be presumed innocent until proven guilty beyond all doubt. All accused persons, including children, must be informed of the charges against them and be allowed legal representation and/or (in the case of children) representation by parents or guardians. The Legal Aid Amendment Act (1996) provides for legal aid to indigent persons (in civil and criminal matters), and also (as contemplated in the Constitution) for legal representation at State expense in criminal matters where substantial injustice would otherwise result.

498. Every arrested person has the right to remain silent, to be informed of this right and of the consequences of not remaining silent. An arrested person cannot be compelled to make any confession or admission that could be used in evidence against him/her, nor to testify during criminal proceedings.

499. The Criminal Procedure Act (1977) states that an accused person may give or bring evidence in his or her favour and address the court and cross-examine witnesses.

500. The Constitution and legislation also provides for the right to a fair trial, including the right of appeal to, or review by, a higher court. People have the right to be tried in a language they understand or interpretation must be made available.

501. The Constitution requires that children be protected from maltreatment, neglect, abuse or degradation. It also gives detained persons, including children, rights during the period of detention. The Correctional Services Act allows a person to be placed under correctional supervision at any time before judgement in a criminal trial. The court may refer young people under 18 to the Children's Court, postpone or suspend sentences or discharge the accused with a caution or reprimand. The Criminal Procedure Act (1977) also provides alternative ways of dealing with convicted young people under the age of 18. These include correctional supervision, custody by a suitable person or reform school. There is no minimum age for referral to reform school, although generally only children of 14 and older are sent to reform schools.

2. Context and implementation

502. Until 1995, the South African criminal justice system provided limited protection to juvenile offenders. Even those provisions that exist have proved inadequate or difficult to implement. Although children between the ages of 7 and 14 are presumed not to have criminal capacity, this is easily rebutted and children under 12 have been arrested and tried in South African courts. Studies have shown that less than 10 per cent of child offenders are legally represented.

503. At present, there is no separate justice system for young people in South Africa. The South African Law Commission is currently engaged in preparing recommendations and draft legislation on a juvenile justice system. The need for such a system is acknowledged in the Convention and the Constitution, and is supported by the National Crime Prevention Strategy and the IMC Policy Recommendations on Young People at Risk, both of which were approved by Cabinet.

504. Other policies which impact on juveniles in the administration are: policy documents drafted by the Departments of Justice (Vision 2000) and the South African Police Service. The National Crime Prevention Strategy has also recognized the importance of a distinct juvenile justice system for children.

505. The Department of Correctional Services has established a Sub-directorate on Youth Offenders Services to determine national policy on the detention and treatment of juveniles. It is the Department's policy to

provide separate detention facilities for young persons, including those under the age of 21 years. In practice, children under 18 are not always detained separately from older persons.

506. The South African Law Commission is also conducting an investigation on sentencing and has recommended that community views be obtained. Papers have been published on the compensation of victims, community participation and individual interests, and minimum and maximum sentences. Other current and critical areas of investigation include restorative justice, compensation for the victims of crime, victim empowerment and alternative dispute resolution.

507. As mentioned, the Constitutional Court has abolished corporal punishment as a sentence for juveniles and this has been confirmed by legislation.

508. Government has set up an intersectoral committee for the management of juveniles awaiting trial which has begun to gather more accurate statistics and is developing a model for the local monitoring of children awaiting trial.

3. The way forward

509. The South African Law Commission Project Committee on Juvenile Justice is currently engaged in a broad based public consultation process based on a published Issue Paper. Issues include:

(a) The inclusion of international principles in the legislation itself;

(b) The question of age and criminal capacity;

(c) Ways to ensure that young people are legally represented in court;

(d) Police powers and duties, including the obligation to trace and notify parents, guardians and other role players, and alternatives to arrest, including diversion options;

(e) Pre-trial detention and release policy, including compulsory assessment of each child and a schedule of offences stating where it is and is not possible to detain a child;

(f) Alternatives to bail;

(g) Diversion, including referral procedures and the legislating of diversion options;

(h) Questions relating to models for juvenile courts;

(i) Sentencing guidelines and post-conviction strategies, and

(j) A system of monitoring the system at local and national levels.

510. The IMC has made policy recommendations on youth justice. Pilot projects to test these recommendations have been in operation since 1996. An arrest, reception and referral centre in Durban has provided pre-trial

services to over 2,000 children during 1996-97. A "one-stop-centre" which centralizes youth justice services in a community-based centre has assisted 500 children in Port Elizabeth. In Pretoria, a Family Group Conferencing Pilot Project is testing a restorative justice diversion programme.

511. Although not legislated for, diversion programmes have been developed largely in the NGO sector. In 1995, approximately 4,000 children were diverted away from the criminal justice system. Plans are underway to extend diversion.

512. One of the critical challenges is to educate the public about their rights and impart knowledge about various legal processes. This must be coupled with training suitable court personnel in the administration of justice to children.

E. Children involved with the system of the administration of juvenile justice, children deprived of their liberty (art. 37)

1. Legal and constitutional framework

513. The Constitution provides that children may be detained only "as a measure of last resort" and "for the shortest appropriate period of time". Children have a right to be kept separately from adults and treated in a manner, and kept in conditions, that take account of the age of the child.

514. Life imprisonment is not prohibited for children. There are presently four children known to be serving sentences of life imprisonment in the country. Capital punishment has been ruled unconstitutional for all persons, including children.

Pre-trial detention of unconvicted children

515. Methods to secure the attendance of accused persons, including children, in court include arrest and written notice. Bail is available, subject to reasonable conditions. (See previous section on juvenile justice proposals). In lieu of bail, an accused person under the age of 18 years can be placed in the custody of his or her custodian. An arrested person must appear before a court within 48 hours or, in the case of children of 14 years old or younger, within 24 hours. Parents or guardians of children under 18 must be traced and notified and warned to attend the proceedings. The probation officer or correction official must also be notified.

516. It has been estimated that between 60,000 and 160,000 children are arrested each year. At this stage, no national juvenile arrest statistics are available.

517. During a trial, the identity of a child accused below the age of 18 may not be revealed.

518. Children who are illegal aliens may be arrested and detained until deportation. It has been found that the limitations of the Amendment to the Correctional Services Act (1995) (below) do not apply to children detained as

illegal aliens, and they can therefore be detained in prisons or in police cells without the necessity of appearing in court within 24 or 48 hours.

519. The Correctional Services Amendment Act (1996) provides that no unconvicted child may be detained in a prison, police cell or lock-up. As a result, all unconvicted children in prisons and police cells (some 2,000) were released in May 1995. Where possible they were sent to places of safety which proved inadequate and resulted in the absconding and, in some cases, committing of further serious offences. As a result, the Act was again amended in 1995, pending the establishment of sufficient secure care facilities for children who have committed serious crimes. The amendment allows for the detention of children between the ages of 14 and 18 years who have committed serious offences. 43/ The detained child must be brought before a court every 14 days to have his or her further detention considered. This is temporary legislation which will fall away in May 1998. Thereafter, children who are assessed to require physical containment will be held in secure care facilities. These are new residential care facilities staffed by specially selected and trained people. The IMC is in the process of setting up one secure care facility in each province, and two have already opened. They will be staffed by especially trained staff.

2. Context and implementation

520. The Issue Paper of the South African Law Commission Project Committee on Juvenile Justice recommends the drafting of sentencing guidelines, the exclusion of certain sentences in certain instances (for example, no imprisonment for children under 14) and improved monitoring and review of sentences.

521. It is also noted that an investigation requested by Cabinet in 1996 revealed serious human rights abuses in reform schools in South Africa. Reform schools fall under the Department of Education. There is, therefore, a need for a thorough review of this sentencing option, including an exploration of possible alternatives.

522. The Department of Correctional Services is in the process of establishing youth development centres for the treatment and rehabilitation of young people serving prison terms. Two such centres are already in existence, and educational and vocational programmes are presented there. At some other prisons where children are serving prison terms, educational programmes are available. However, many other child prisoners do not have access to education or vocational training. The Ekuseni Youth Development Centre, an initiative of the private sector, the Nelson Mandela Children's Fund and the Ministry of Correctional Services, is a pilot project to pioneer educational and vocational programmes for young offenders. There are currently just over 1,000 children serving prison terms on any given day.

F. Children in situations of exploitation, including physical and psychological recovery and social reintegration: economic exploitation of children, including child labour (art. 32)

1. Legal and constitutional framework

523. The Constitution says that "every child has the right to be protected from exploitative labour practices and not to be required or permitted to perform work or provide services that are inappropriate to a person of that child's age or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development".

524. The present Basic Conditions of Employment Act (1983) prohibits the employment of children under the age of 15. However, the Act makes no provision for enforcing this prohibition. This responsibility rests in the Child Care Act (1983). However, the Child Care Act (1983) does not make provision for inspectors, and the Department of Welfare does not have the capacity to undertake inspections.

525. The Basic Conditions of Employment Act is being reviewed and a new Basic Conditions of Employment Bill is to be tabled in Parliament before the end of 1997. This Bill, which includes a special chapter on child and forced labour, prohibits the employment of children under the age of 15 or below the minimum school leaving age if this is more than 15. At present the South African Schools Act (1996) stipulates 15 as the school leaving age.

526. The Bill also contains provisions for the criminal enforcement of the prohibition of child labour and protects children who are employed between the ages of 15 and 18. The Bill enables the Minister of Labour to make regulations prohibiting or placing conditions on the employment of such children.

527. South Africa has not ratified any of the existing International Labour Organization (ILO) Conventions on child labour, although the Department of Labour is in the process of discussing the ratification of Convention 138. South Africa is also part of the revision process of the proposed new ILO Convention.

2. Context and implementation

528. Despite the prohibition of child labour by the State, there is, as elsewhere, public debate on the issue. Children who work are very often essential to providing the family income and are sometimes the sole breadwinners. This is precisely why legal measures aimed at preventing the economic exploitation of children are so difficult to monitor, particularly in the informal sector. Job creation and training adults for the market driven economy is one way of combating child labour. Also, making employers of child labourers responsible for the conditions under which they employ children is essential.

529. In South Africa, child labour is often a result of poverty in families and communities. The South African Household Survey (1994) estimates that 200,000 children between the ages of 10 and 14 years are engaged in work.

530. Many children living on farms in South Africa are forced to work. At least one in every three child workers lives in a commercial farming area. Wages are low, if paid at all, and living conditions are poor. Some reports suggest that children work before and after school for four hours a day, for which they are paid an average of R40 per month. There are also reports of children being subjected to cruel treatment on farms.

531. Another feature of child labour on farms is that the work is often hazardous. Young children are known to be exposed to toxic substances on farms, pesticide poisoning, as well as being injured by farm machinery.

3. The way forward

532. In 1996, the Department of Labour together with the ILO set up a team of experts to investigate the possibilities of doing a national comprehensive survey on child labour. The aim of this was to explore ways of improving the information base and the understanding of the nature and extent of child labour in South Africa.

533. As a result, the ILO and the Central Statistical Service (CSS) plan to carry out a comprehensive national survey during 1998. The survey results should be available in 1999.

534. The survey will form part of a programme of technical cooperation with the ILO, and the Government is in the process of signing a Memorandum of Understanding with the International Programme on Exploitation of Children (IPEC) in this regard.

535. The Department of Labour has also held a number of meetings with trade unions, employer organizations and NGOs active in the area of child labour. An intersectoral group on child labour under the auspices of the Department of Labour is in the process of being established.

536. It is envisaged that this intersectoral group will play a number of roles, including debating policy options, developing a programme of action to combat child labour and ensuring coordination of initiatives by different stakeholders.

G. Children in situations of exploitation, including physical and psychological recovery and social reintegration: drug abuse (art. 33)

1. Introduction

537. The age of drug, tobacco and alcohol abuse amongst children is becoming increasingly lower. There is little or no known legislation relating specifically to children in this regard, particularly in regard to

rehabilitation. An aggressive anti-smoking campaign is being conducted by the Health Department, and alcohol abuse is currently addressed through driver safety campaigns.

538. The current school curriculum does not place enough emphasis on the prevention of substance abuse. Drug prevention will form part of the Life Skills component of the new Curriculum 2005 to be introduced in 1998 (see chap. VII).

539. Where children are found to have a drug problem there are few, if any, rehabilitation centres specifically for children. Some intervention measures are in place in prisons.

2. Legal and constitutional framework

540. Legislation which relates to drug-trafficking, drug use, policing and drug abuse includes the Drugs and Drug Trafficking Act (1992), the International Cooperation in Criminal Matters Act (1996), the Proceeds of Crime Act (1996), the Extradition Act (1962), the Extradition Amendment Act (1996), the Interception and Monitoring Prohibition Act (1992), the Criminal Procedure Act (1977), the Prevention and Treatment of Drug Dependency Act (1992), the Liquor Act (1989), the Draft Liquor Bill (1997) and various municipal by-laws.

541. The South African Law Commission plans to investigate the protection of children as both users of and traffickers in drugs and draft appropriate legislation.

3. Context and implementation

542. The Government is planning an interdepartmental task team (as part of the IMC) to create a comprehensive prevention and education strategy for children and drugs. The Children's Desk of the Office of the Deputy President will be included on this Task Team. The Task Team will investigate the creation of Family Mediation and Counselling Centres in communities in order to provide a variety of services to youth and families and help them stay out of court.

543. The framework for a National Drug Master Plan of the Drug Advisory Board includes policy formulation aimed at reducing the demand and supply of illicit drugs.

544. At national level, there have been new programmes developed in various departments to provide information and raise awareness around issues relating to drug abuse. Examples are the "I'm addicted to life" television series and the "Adopt a Cop" programme, which is, amongst other things, intended to educate children on the dangers of drugs, alcohol and cigarettes.

4. The way forward

545. It is necessary to develop more preventive programmes and public awareness campaigns against drug use that reach out specifically to children. Children and communities need to be involved in the campaigns.

546. The Vienna Convention on Trafficking in Narcotic Drugs and Psychotropic Substances has not as yet been ratified by South Africa.

H. Children in situations of exploitation, including physical and psychological recovery and social reintegration: sexual exploitation and sexual abuse (art. 34)

1. Introduction

547. Recent media and police records reflect a disturbing increase in reports of sexual abuse of children. Some caution must be exercised in establishing statistics as there has, undoubtedly, also been an increase in reporting in a previously under-reported area. However, only a very small percentage of crimes against children is reported. Under-reporting and the lack of systematic research, record keeping and a central register make figures difficult to estimate.

548. Despite this, the rate of child abuse has risen to appalling levels. In 1996, the Child Protection Unit alone dealt with 35,838 cases of crimes against children, which represents an average increase of 36 per cent per year since 1983. During 1995 to 1996, officially reported cases of sexual crimes against children demonstrated an increase in rape (38 per cent), sodomy (35 per cent) and incest (15 per cent).

549. Most reported cases are dealt with by the social services. Child Welfare Societies 44/ deal with an average of 9,398 cases a month, 23 per cent of which are for physical or sexual abuse.

550. The dramatic escalation of child abuse cases has lead to draft legislation to introduce mandatory sentences where victims are young persons, as well as the possible refusal of bail for suspects who are charged with offences related to sexual and physical abuse of children.

551. In a society where 53 per cent live on an income of less than R170 per month, poverty is a driving force behind prostitution. Like many social problems which were swept under the carpet during the apartheid years, commercial sexual exploitation of children and abuse now emerge as serious challenges to society. While the commercial sexual exploitation of children is manifest in many spheres and areas, no quantification can be made at present.

552. The commercial sexual exploitation of children appears to be on the increase in certain areas. 45/ The migrant labour system drew prostitutes to the hostels and towns. Research has shown that hostels are frequently "serviced" by school girls. The large commuter population around taxi ranks has led to organized child prostitution. It seems that employees of the taxi industry are the organizers and procurers. Due to its size, South Africa has a large trucking business which has created a demand for child prostitution. The extensive and highly exploitative system of domestic workers provides hidden opportunities for sex services, either forced or paid. Sex tourism using children is on the increase and, in addition, large numbers of (often minor) females have been brought into the country. Finally, harbours are likely to foster prostitution and, in consequence, child prostitution.

553. The HIV/AIDS epidemic could be regarded as a contributory cause and consequence of the sexual exploitation of children. The dangerous myth that sex with a virgin or young girl will either cure or prevent AIDS has stimulated an increase in child sexual exploitation. On the other hand, HIV/AIDS leaves increasing numbers of children orphaned. Often selling their bodies is the only way to survive in a child-headed family.

554. Knowledge about the incidence and nature of commercial sexual exploitation in South Africa is scant. It forms part of the wider phenomenon of child abuse and the sexual abuse of children. The sexually exploited child is not paid in cash, but in kind. In other words she or he receives shelter, food and other necessities in return for sex. Both adolescent boys and girls with no other means of supporting themselves and their families regard sex as an "acceptable" way to earn money. This is called "survival sex".

2. Legislative and policy framework

555. The Constitution explicitly states that all children have the right to be protected from maltreatment, abuse, neglect and degradation. There is, however, no clear statutory definition of child abuse, child sexual abuse or child neglect in South African law, although child abuse and neglect are criminalized in the Child Care Act (1983).

556. The Sexual Offences Act (1957) covers some specific aspects and forms of child sexual abuse. It also identifies an age of consent, below which some forms of abuse amount to statutory rape. There is a discrepancy between the ages of consent applicable to boys (19) and girls (16). The Act also contradicts the Child Care Act (1983), in terms of which a parent can be found unfit if he or she allows a girl of under 18 years to be exposed to sexual activity. The Act does not address problems such as "sex tourism" which is growing in South Africa. It is generally considered to be defective in the protection it affords children.

557. The Child Care Act (1983) focuses on this and other forms of abuse. Not only does it provide for a criminal offence, but abuse and/or neglect can be reasons for removal of a child from parental care. At common law, a range of offences exist which proscribe acts which are abusive, such as assault, indecent assault, incest, rape, etc. However, cases of abuse may sometimes emerge as part of a different judicial process (such as a maintenance hearing, a divorce matter or an application for custody or access), and there are no clear protocols for addressing child abuse then, nor does the best interest of the child always take precedence.

558. The children's court procedure takes the form of an inquiry. Many child commissioners unnecessarily extend the period during which the social worker must investigate the child's circumstances. Thus the finalization of an inquiry may extend from between 8 weeks to 16 weeks or even longer. Child commissioners are not yet specifically trained to deal with children or family problems.

559. Children may, after an inquiry, be removed and placed in care, including foster care, a children's home or another institution. However, children in institutions may not necessarily be better off. The IMC report on places of

safety, industrial schools and reform schools found punitive disciplinary regimes, widespread use of isolation cells, unhygienic sanitary facilities, and claims by children of physical and sexual abuse.

560. The Prevention of Family Violence Act (1993) allows a presiding officer to grant an interdict preventing assaults or threats against an applicant or a child living with either the applicant, the offender or both. An offender who contravenes such an order may be arrested, thus removing perpetrators rather than victims from their homes. There are, however, difficulties in implementing this Act. Police officers remain reluctant to involve themselves in issues of family violence, there are bureaucratic delays and further serious stumbling blocks. The Act is not commonly used to prevent child abuse. The South African Law Commission is however investigating this Act, and has released a discussion paper for comment.

561. The Films and Publications Act (1996) prohibits the production, possession and distribution of pornographic material depicting children younger than 16 years of age, and provides for the protection of children from exposure to pornographic material. Internet, as elsewhere, has become a serious concern.

562. Prostitution is not defined in the Sexual Offences Act (1957). The Act creates a number of offences such as keeping a brothel, parent/guardian procuring defilement of a child under 18 years; conspiracy to defile; detention for purposes of unlawful carnal intercourse; abduction (under 21 years); sexual offences with youths and "idiots or imbeciles"; enticing to commission of immoral acts. The very language of the legislation is archaic and inappropriate, and there are aspects that might offend constitutional provisions.

563. The Act prohibits the sexual exploitation of children, that is girls under the age of 16 and boys under the age of 19 years.

3. Context and implementation

564. Evidence is difficult to obtain as sexual offences usually occur in conditions of secrecy. The State's case will often rest on the testimony of the victim alone, frequently a traumatized young child and, occasionally medical evidence where it is available. Even where medical evidence exists, it does not necessarily link the victim to a specific offender. In addition, the physical effects of abuse are variable and depend very much on the nature of the abuse and the period of time over which abuse has occurred.

565. Multiple problems are experienced when child abuse cases are brought to court. The special difficulties which the current system presents in obtaining convictions for crimes against children and the collapse of such cases leads to ongoing and sometimes heightened risk to the victim or other children. These include: secondary abuse when children are required to give testimony in adversarial courts designed for adults; lack of appropriately trained personnel at all stages; endless delays and remands due to congestion in the court system; problems experienced with the law of evidence; lack of independent representation for the child victim; the lack of effective

policies for bail and sentencing; lack of witness protection for victims and their families; and lack of back-up resources to enable the court to make orders in the best interests of children and their families.

566. A major stumbling block is the evidentiary cautionary rules, which apply to persons who are victims of sexual offences. Also, there is a cautionary rule where a person is a single witness, and where the person is a child. The compounded effect of three cautionary rules which can apply where a child is the sole witness to a sexual offence, makes a conviction almost impossible.

567. Recently, legislation has been placed on the statute book to allow for testimony to be given through an intermediary, or through one-way television monitors. Also, anatomical dolls may be used. The Department of Justice is currently increasing the degree of access of courts to these special facilities.

568. The circumstances under which parental authority to conduct a medical examination can be waived needs to be clearly defined. This process needs to be coordinated and swift. Where a parent is a perpetrator, it is unlikely that s/he will consent to medical examination. The refusal by parents to grant permission for medical examination further complicates the process of evidence-gathering and compromises the prosecution and conviction of offender(s).

569. The criminal law and criminal procedure is thus ineffective at present. Convictions are infrequent, and an acquittal may be seen by the perpetrator as a vindication of the legitimacy of his or her behaviour. This makes therapeutic intervention impossible. Successful prosecutions, on the other hand, do not necessarily act as deterrents, but tend to confirm the perpetrator in his or her negative self image. Finally prosecutions divide families, and there is often a reluctance to submit family members (especially the breadwinner) to punitive criminal processes.

570. It is a sad fact that children under 18 also commit sexual offences against other children. The common law presumption that a boy under the age of 14 could not be convicted of rape was abolished by legislation in the 1980s. The criminal justice system does not cater adequately for juvenile sexual offenders, and there are at this point no programmes which specifically address their needs and requirements. Reports of sexual abuse of children in institutions, both by other children and by staff, surface regularly.

571. Vision 2000 is a policy document produced by the Department of Justice. It sets out a Plan of Action aimed at making the justice system child friendly, by means of training personnel. The Department of Justice has also issued a circular to all courts on how to deal with women and children in cases of this nature. A series of workshops on child abuse is also envisaged.

572. The Department of Welfare has released a report of the National Abuse and Neglect Committee (1997). In addition, the Department is in the process of developing a policy document on dealing with children who are the victims of the sexual abuse. In addition to this Government and NGOs are working on a

national register of sexual and child abuse offenders. Similarly the Children's Commissioner Bill will focus on establishing a provincial register for predatory sexual offenders.

573. The National Crime Prevention Strategy makes a decisive shift towards crime prevention. The aim of this strategy is to reduce the factors which lead to criminality in the first instance. The strategy addresses issues of child protection.

574. Stemming from the World Congress against Commercial Sexual Exploitation of Children (1996), the Minister of Welfare set up a multidisciplinary task team to develop a Plan of Action against sexual exploitation of children.

575. There are a number of local policy initiatives such as sensitivity training courses for members of the South African Police Service.

576. At a provincial level there are forums, alliances and networks concerned with sexual abuse against children. As a result provincial campaigns at various levels have surfaced. In the Western Cape, for example, a network of NGOs involved with sexual exploitation of children have launched an awareness raising campaign and radio shows around this issue.

577. Three specialized Sexual Offences Courts currently function in the Western Cape, and other similar initiatives exist in other urban centres. The objectives of these courts is to reduce inappropriate and insensitive treatment of children and women who have been sexually abused. The courts also attempt to coordinate services in an integrated manner and finally to improve reporting by victims, as well as conviction rates of persons who commit sexual offences. Recently a new court was set up primarily to address the 300-case backlog in the Sexual Offences Courts. There is also a pilot project in some Gauteng courts where all sexual offences are dealt with by a specially trained group of prosecutors and magistrates. At some courts, NGOs offer advice to victims who are involved in criminal proceedings.

578. A small private sector initiative called "The House" has been set up to remove from undesirable places and assist in the rehabilitation of persons under the age of 21 who are involved in, amongst other things, prostitution and/or are subject to criminal exploitation, particularly to sexual abuse. In doing so, The House will work with law enforcement agencies including the police, welfare institutions in correctional and educational facilities, private sector institutions, churches and religious organizations. The House will also assist in the education of the public in matters relating to drug abuse, juvenile prostitution and HIV/AIDS.

4. The way forward 46/

579. There is a need to deliver an effective service with limited resources. In most parts of the country all components of the child protection system are under-resourced and overstretched.

580. There is a need to coordinate services and ensure that they extend to currently unserviced areas, especially the rural areas.

581. There is a need to improve the processing of child sexual offences by the judicial system. In a study, it was found that nearly half the sex offenders that could be traced were not tried for the offences they committed. In nearly a fifth of the cases, offenders were tried and found not guilty. Only 7.4 per cent received a prison sentence.

582. There is a need to provide counselling services and support for victims.

583. The National Working Group for the Prevention of Child Abuse and Neglect has drawn up a blueprint for an effective national strategy to combat child abuse and neglect. The Departments of Justice, Health, Safety and Security and Welfare have developed Guidelines for the Coordinated Management of Rape Survivors, which was launched in September 1997.

584. There is a need to give closer attention to the growing sex tourism.

585. The reporting of child abuse by the media needs to be sensitized as well as deracialized.

586. One important challenge with regard to the commercial sexual exploitation of children is for Government to sign the Optional Protocol on the Sale of Children, Child Prostitution and Pornography. There is also a need further to implement the Declaration and the Agenda for Action of the World Congress against the Commercial Sexual Exploitation of Children.

587. Ways need to be found to develop and expand appropriate sexual offender programmes in a coordinated manner that take into consideration victim programmes that include children. Communication is a very important factor in this equation. Children need to be secure and comfortable in reporting abuse. Some of the urban areas enjoy help line or emergency services but children are confused by the variety of different telephone numbers. A dedicated telephone number should be made available for reporting abuse.

588. There is a need to address the interrelationships between substance abuse, domestic violence and child maltreatment.

I. Children in situations of exploitation, including physical and psychological recovery and social reintegration: sale, trafficking and abduction (art. 35)

589. In order to address the issue of international child abduction, the Government adopted the Hague Convention on the Civil Aspects of International Child Abduction into domestic law in the Hague Convention on the Civil Aspects of International Child Abduction Act (1996). This Act facilitates the implementation of the Hague Convention, restricting the wrongful removal of children across international boundaries and establishing a procedure to restore children to their rightful custodians as soon as possible.

590. However, domestic legislation does not cater adequately for crimes such as domestic abduction, baby snatching, and kidnapping, and the sale and trafficking of children. There is a dearth of information in this area and data needs to be collected. In addition, parents and children need to be educated about these crimes.

591. The Missing Persons Bureau of the South African Police Services lists 508 missing children nationwide since its inception in October 1994. There are no disaggregated statistics regarding the number of missing children found. A register of missing children has been set up to track this alarming trend.

J. Children belonging to a minority or an indigenous group (art. 30)

592. Apartheid disadvantaged the majority of South Africans. This disadvantage has been cumulative over the many years of the oppression experienced by black South Africans, particularly Africans. It is thus the majority group in South Africa that must be the focus of the Government's greatest concern.

593. To overcome the legacy of the past, South Africa will need massive resources and public education. It will be some time before equity will be arrived at. The Reconstruction and Development Programme (RDP) was established in 1994 (and was indeed the Manifesto of the majority party before the elections). The purpose of the RDP is to guide government spending and establish needs and priorities. Because of the urgent need to provide for the children, the RDP quickly established a "first call for children".

1. Legal, constitutional and policy framework

594. The Constitution explicitly states that no person shall be discriminated against on the grounds of ethnic or social origin. It says, further, that everyone has the right to use the language and to participate in the cultural life of their choice, provided they do not do so in a manner inconsistent with any provision of the Bill of Rights.

595. Rights are thus granted to cultural, religious and linguistic communities. The establishment of a Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities is under discussion.

596. The South African Schools Act (1996) is a critical piece of legislation which makes a dramatic shift from the apartheid school system which entrenched inequality and provided black children with inferior and inadequate education and educational resources. The Schools Act and its implications are discussed in detail in Chapter VII.

597. Although customary law may differ among different communities, there are certain unwritten rules and practices which are generally applicable. These rules provide the framework within which family matters are arranged, and they reflect socio-cultural beliefs and practices of many people, especially in rural areas.

598. There are some areas in which South African civil law and customary law do not accord with one another and, for this reason, the South African Law Commission is working on the harmonization of common and indigenous law.

599. The Births and Deaths Registration Amendment Act (1996) and the Child Care Amendment Act (1996) recognize religious and customary marriages. Previously the children of such marriages were considered illegitimate.

2. Context and implementation

600. The Pan African Language Board is a statutory body. It is charged with promoting, developing and creating conditions for the use of all official languages (11), the non-official languages like Sign, Khoi, Nama and San languages as well as promoting and ensuring respect for all other languages commonly used in South Africa.

3. The way forward

601. Harmonizing customary law with children's rights is essential. At the same time there is a need to ensure that traditional practices, particularly where they affect the girl child, comply with the requirements of the Constitution and the Convention.

602. Discrimination against the girl child is a sad feature of patriarchal and some traditional societies. The practice of child brides (with a bride price) still exists in religious, cultural and social contexts in South Africa. The girl child has very little say in the choice of a partner in an arranged marriage. However, neither law nor custom nor centuries of tradition can be changed overnight. Empowerment of women, including the girl child, can be achieved only through education and the raising of awareness.

603. The circumcision of boy children is another area requiring study, particularly with regard to health hazards when the circumcision is done with infected or rusty instruments. This also requires information, education and access to safe health care.

Conclusion

604. Since South Africa ratified the Convention on the Rights of the Child, a great deal of work has been done to prepare the ground for change in the lives of children. The Constitution, with its crucial section 28 on the rights of the child, is in place. Legislation has been passed. More is envisaged. Policies have been developed. Important partnerships between Government and society have been forged.

605. Over the next five-year period, the challenge will be to implement the measures for which this framework provides. There is much to be done. There are still many problems and areas of great disadvantage and inequity. There is also a need to stimulate the economic growth without which the best laid plans will founder. But, whatever the hurdles that lie ahead, a start has been made and it is time to move on to the next stage. The building blocks are ready, and now the house in which our children will live, learn and grow to be the future citizens of South Africa must be built.

Notes

1/ South Africa is the first country to base its NPA on the Convention.

2/ The seven priority areas include nutrition, child and maternal health, water and sanitation, early childhood development and basic education, social welfare development, leisure and cultural activities and child protection measures.

3/ See chapter VII.

4/ See the core document for a short description of Growth, Employment and Reconstruction (GEAR).

5/ 16 June marks the start of the Soweto school children's uprising in 1976.

6/ According to figures supplied by the Gun-Free South Africa Campaign, 759 children under the age of 18 have gun licences, mainly for sporting purposes. Although the law allows it, there is hesitation in granting licences to young people under 18 for purposes of self-defence. There is currently a proposal that the age limit be raised to 18.

7/ That the court must exercise some caution as to the credibility of a rape victim.

8/ South African Law Commission Issue Paper on Sexual Offences Against Children.

9/ Youth are defined in the Act as between 16 and 35.

10/ The majority of refugees, particularly women and children, flee on account of war and famine. UNHCR estimated that there were 250,000 displaced persons in South Africa, mainly from Mozambique. They do not qualify for refugee status as the war is over. Of the 120,000 registered for voluntary repatriation, only 31,000 returned home. It is estimated that 70 per cent of those remaining are women and children. Little research has been done on their circumstances although it is well known that many work under appalling conditions on White-owned farms.

11/ According to a study undertaken by the Central Statistical Services (CSS), 68 per cent of the 809,439 births registered in 1995 took place in 1994 or earlier.

12/ "Homelands" were established under the apartheid regime as a means of achieving separate development. Separate administrations were set up and homelands were given the power to pass their own laws and regulations. Some were even granted independence. Although these territories were reunited with South Africa in 1994, rationalization of systems and administrations has proved a huge task which is not yet complete.

13/ During the apartheid regime, pass laws were used as an instrument to control the movements of Black people and to ensure their non-participation in White society. Black people who failed to produce their passes on demand were liable for arrest and imprisonment. This created widespread resistance to the notion of identity documents.

14/ It is based on the internationally accepted Children's Television Charter, adopted in Munich on 29 May 1995. The Charter promotes the right of the child to seek, receive and import information and ideas of all kinds, through the media of choice. Because of poor access to television, the use of radio is encouraged.

15/ This right was severely tampered with in the years before 1994 through both prohibitive legislation and the declaration of states of emergency.

16/ In crimes involving treason, sedition, public violence, murder, rape, indecent assault, robbery, kidnapping, child-stealing, assault with a dangerous weapon when a wound is inflicted, arson, fraud, theft, breaking or entering property, forgery, organized crime and drug trafficking.

17/ Prior to its abolition, 35,000 child offenders (boys only) per annum were whipped.

18/ Approximately one third of hospital beds were in private facilities, and 59 per cent of doctors, 93 per cent of dentists, 89 per cent of pharmacists and 60 per cent of supplementary health personnel worked in the private sector. See "First Call: The Children's Budget," p. 40.

19/ Sources: Central Statistical Services (1995), South Africal Vitamin A Consultative Group (1995), National Institute for Economic Policy (1995), South African Health Review (1995).

20/ The wide variation between aggregates of 41.8 per 1,000 live births in 1991 and 71 in 1992 mask racial and geographic differences.

21/ House-to-house visits were done in sparsely populated areas; the National Defence Force supplied helicopters and 4 x 4 vehicles to reach inaccessible areas; a door-to-door strategy was used in areas where there were foreigners and at mine dumps, special plans were made to reach street children, and farms, shops and tribal offices were used as temporary posts. Some remote areas were reached by fixed-wing aircraft.

22/ Previously rehabilitation services were confined to secondary and tertiary levels.

23/ "Red Hot News, HIV ... South Africa's New Struggle", May 1997.

24/ Quoted in "First Call: The South African Children's Budget", p. 35.

25/ Satellite offices have been set up in High Court jurisdictions in former homelands.

26/ Dr. C. Matthias, "Removal of Children and the Right to Family Life", CLS 1997.

27/ In 1995, the State subsidized 182 children's homes, but subsidy rates differ between provinces. In 1996/97 R95,891,000 was allocated to funding places of safety, R25,708,000 to children's homes and R14,746,000 to places of detention from the Welfare budgets.

28/ For a summary of the Lund Committee Report, see chapter V.

29/ "First Call, South African Children's Budget", p. 298.

30/ Age is a more powerful determinant than gender. The proportion of African women in the mothering age groups (20-49) varies from 62 per cent of African women aged 40-49 who have reached standard 5 (grade 7) or less, compared to 25 per cent of those aged 20-24. (CSS October Household Survey).

31/ CSS 1994 Household Survey.

32/ Another question that needs exploration in this regard is that of relating the culture of the child and of schools to broader transformation.

33/ Africans still lag in educational achievement. 23 per cent of Africans aged 15-19 have not passed standard 4 (grade 6) compared with 1 per cent of Whites. The proportion of Africans with a tertiary degree is about 1 per cent in all age groups compared to about 12 per cent of Whites.

34/ Department of Education, the Department of Arts, Culture, Science and Technology and the Department of Sport and Recreation.

35/ The South African Constitution states that policy is determined at a national level, but that provinces have certain powers to implement national policy. Consultation is required and the National Council of Provinces (NCOP), the second house of Parliament, has special powers in respect of laws affecting provinces. The National Education Policy Act states that the Minister must consult with the Council of Education Ministers before establishing policy.

36/ The reports of the National Commission on Special Needs in Education and Training and the National Committee for Education Support Services are due in November 1997.

37/ An intersectoral initiative, the National Network on Violence against Women and Girls, is of relevance to schools.

38/ Early childhood education is another victim of neglect during the apartheid years. In 1995/96 the expenditure on pre-primary education in ordinary public schools was R213 million, i.e. 0.63 per cent of the total expenditure on education. Only 9 per cent of children, from birth to six years, have access to any ECD services.

39/ ECD is based on the following principles: learning begins at birth, joint and shared parental responsibilities, the defence of children's rights, attention to children who are disadvantaged or suffer from disabilities, and children's enhanced development. It shares the visions of the Convention the World Declaration on Education for All and the World Summit for Children. The ECD strategy makes provision for policy, curriculum, accreditation, training, employment of ECD practitioners, funding of ECD services and policy development structures.

40/ To date, more than 10,000 hours of volunteer services have been provided to communities, 80 per cent of these trainees render their services in the rural areas. In addition to this, 124 of these leaders have completed the second level and a further 22 the third level of training.

41/ Ekuseni, a Youth Development Centre in Newcastle, was officially opened by President Nelson Mandela on 19 November 1996. Thirty prisoners have already attended a SANGALA training course and will be responsible for the presentation and organization of SANGALA projects in the prison. An additional 30 prison wardens from Gauteng were trained during December 1996 to present SANGALA projects in prisons.

42/ The majority of refugees, particularly women and children, flee on account of war and famine. UNHCR estimated that there were 250,000 displaced persons in South Africa, mainly from Mozambique. They do not qualify for refugee status as the war is over. Of the 120,000 registered for voluntary repatriation, only 31,000 returned home. It is estimated that 70 per cent of those remaining are women and children. Little research has been done on their circumstances although it is well known that many work under appalling conditions on White owned farms.

43/ Murder, rape, robbery where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved, assault with the intent to do grievous bodily harm, assault of a sexual nature, kidnapping or drug trafficking.

44/ Affiliated to the South African National Council for the Child and Family, only one of the relevant social service groupings.

45/ Neville Chainee, National Institution for Public Interest Law and Research.

46/ Many of the points in this section were raised by the South African Delegation to the World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden and headed by Ms Geraldine Fraser Moleketi, Minister of Welfare and Population Development (1996).